

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1956

No. 313

BROTHERHOOD OF RAILROAD TRAINMEN, ETC.,
ET AL., PETITIONERS,

vs.

CHICAGO RIVER AND INDIANA RAILROAD
COMPANY, ET AL.

ON WRIT OF HABEAS CORPUS TO THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

PETITION FOR HABEAS CORPUS FILED AUGUST 12, 1956

HABEAS CORPUS GRANTED OCTOBER 12, 1956

SUPREME COURT OF THE UNITED STATES

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[Caption omitted]

[fol. 5] **IN THE DISTRICT COURT OF THE
UNITED STATES**

**NOTICE, ORDER TO SHOW CAUSE, AND TEMPORARY RESTRAINING
ORDER—Filed July 16, 1954**

It appearing to the court from the verified complaint and from testimony, adduced in open court that a restraining order preliminary to a hearing upon a motion for an injunction, to issue, without notice, because defendants and the yard foremen, yardmen and switchmen are about to go out on strike and that they will do so unless restrained by order of this court, and that immediate and irreparable injury, loss and damage will result to plaintiff, to five hundred industries served by plaintiff, to twenty-nine railroads served by plaintiff, and to the public, before notice can be served and a hearing had on plaintiff's motion for an injunction:

That if the defendants, and the members of the Brotherhood of Railroad Trainmen whom they represent, are permitted to strike, all train operations on and over plaintiff's railroad system will be paralyzed; that plaintiff will be forthwith forced to embargo shipments and curtail or eliminate its services in transporting great quantities of United States mail, goods and properties of industry, including perishable foodstuffs which are continuously and necessarily carried on said railroad, which will deprive plaintiff, the industries affected, other interested railroads, and the public, of large amounts of revenue and of the goods and foodstuffs which are daily carried by plaintiff and its connecting lines; that such damages cannot be wholly estimated, calculated or compensated for in money, and that said damages will be immediate, substantial and irreparable.

Now, Therefore, It is Ordered that defendants, members of defendants' organization and its officers, their agents, servants, employees and attorneys, and all persons including all yardmen, yard foremen and switchmen employed by plaintiff on its railroad, and any persons in active concert and participation with them, and all persons act-

[fol. 6] ing by, with, through and under them, or by or through their order, be and they are hereby restrained until the 19th day of July, 1954, at ten o'clock, A. M., daylight saving time, unless this order be dissolved prior thereto, or extended from:

1. Calling, ordering, authorizing, encouraging, inducing, approving, continuing, starting or permitting any strike or work stoppage on plaintiff's railroad.

2. Picketing or bannering any of the premises on which plaintiff conducts its railroad operations.

3. Interfering with ingress to or egress from said premises.

4. Interfering in any manner with the delivery, loading, unloading, dispatch or movement of any of plaintiff's rolling stock, engines, cars, equipment or trains or any of the contents thereof.

5. In any manner interfering with or inducing or endeavoring to induce any person employed by the plaintiff from performing his work and duties and from in any manner endeavoring to induce any such employee to desist therefrom.

It Is Further Ordered that said defendants, and each of them, take all steps within their power to prevent said threatened strike or work stoppage and its continuance if commenced;

It Is Further Ordered that defendants, and each of them, appear before this court in the United States Court House in the City of Chicago, Illinois, on July 19, 1954, at ten o'clock, and show cause, if any they have, as to why this restraining order should not be continued or made permanent in accordance with the prayers of the complaint heretofore filed;

It Is Further Ordered that a copy of this notice and order, and a copy of the complaint, be served by the U. S. Marshal on the defendants forthwith;

And It Is Further Ordered that copies of the said complaint and of this notice and order be posted as promptly as may be on the bulletin board at each office on plaintiff's railroad system.

Dated July 16, 1954..

J. S. Perry, United States District Judge.

I hereby certify that the foregoing is a true copy of an order entered in this case and on my file in this case.

— — —, Clerk of said Court.

[fol. 7] IN THE DISTRICT COURT OF THE UNITED STATES

AMENDED COMPLAINT—Filed August 2, 1954

Now come the plaintiffs, The Chicago River and Indiana Railroad Company and the other carriers by railroad named in Exhibit 1 herein, and for a Complaint against defendants say:

1. The defendant Brotherhood of Railroad Trainmen is a voluntary organization and is a labor organization within the meaning of the Railway Labor Act, which is, and at all times material hereto has been the recognized and acting collective bargaining agent for all of plaintiffs' employees who are classified as yard foremen and yard helpers (including switch tenders). The Brotherhood of Railroad Trainmen consists of a Grand Lodge and many subordinate Local Lodges, and has its principal business office in Cleveland, Ohio. The Brotherhood of Railroad Trainmen is sued here in its common name. Suit is also brought against the class of its members. The members of the Brotherhood of Railroad Trainmen constitute a class so numerous as to make it impracticable to bring them all before the Court.

2. The defendant Brotherhood of Railroad Trainmen, Lodge #964, is a local lodge of the Brotherhood of Railroad Trainmen with headquarters at Chicago, Illinois.

3. The defendant Felix E. Kazmer is General Chairman of Lodge #964, and is sued in his representative capacity for said Lodge and its members.

4. The defendant Michael V. Smalley is Secretary of Lodge #964, and is sued in his representative capacity for said Lodge and its members.

5. The defendant George C. Hofer is Committeeman of Lodge #964, and is sued in his representative capacity for said Lodge and its members.

6. The defendant W. M. Dolan is Vice President of the Brotherhood of Railroad Trainmen and has his principal [fol. 8] office at Chicago, Illinois, and he is sued in his representative capacity for said Association and its members. He fairly and adequately represents the class of the members of the Brotherhood of Railroad Trainmen.

7. Plaintiffs are corporations. Their names and places of incorporation are stated in Exhibit 1 herein. They are common carriers by railroad, and each is a "carrier" within the meaning of that term as defined in the Railway Labor Act, 45 U. S. C., Section 151. Plaintiff The Chicago River and Indiana Railroad Company operates a line of railroad serving the Union Stock Yards, Chicago, Illinois, and serves the lines of railroad of the other plaintiffs who are engaged in transportation of property in interstate commerce. Their operations would be adversely affected by any stoppage in the operations of The Chicago River and Indiana Railroad.

8. This Court has jurisdiction of this suit because this is an action arising under the Constitution and laws of the United States regulating interstate commerce, and the Fifth Amendment of the Constitution of the United States. The amount in controversy exceeds the sum of Three Thousand Dollars (\$3,000), exclusive of interest and costs. The jurisdiction of this Court is specifically invoked under the provisions of 28 U. S. C. 1331 and 1337; 45 U. S. C. 151 et seq. (the Railway Labor Act); and 49 U. S. C. 1 et seq. (the Interstate Commerce Act).

9. In the conduct of its business The Chicago River and Indiana Railroad Company employs a class of employees, among others, generally referred to as yard foremen and yard helpers (including switch tenders) whose duties, generally stated, are the handling and controlling of the movement of railroad cars and trains over the rails of The Chicago River and Indiana Railroad Company. The Chicago River and Indiana Railroad Company cannot operate its railroad without the performance of these duties. These employees are all members of or represented by the Brotherhood of Railroad Trainmen and Lodge #964, and The Chicago River and Indiana Railroad Company has recognized the Brotherhood of Railroad Train-

men as the collective bargaining agent for these said employees.

10. Plaintiffs, defendants and plaintiffs' employees represented by defendants are subject to the Railway Labor Act, the general purposes of which are, among [fol. 9] other things, to avoid any interruption to commerce or to the operation of any carrier engaged therein, and to provide for the prompt and ordinary settlement of all disputes growing out of grievances or out of the interpretation or application of agreements covering rates of pay, rules or working conditions.

Congress has established compulsory administrative machinery under the Railway Labor Act whereby parties to a collective bargaining agreement are required to submit such controversies as are here involved to the National Railroad Adjustment Board or to a proper court or board without resorting to self-help.

11. For many years prior to the claims and grievances hereinafter referred to and continuing up to the present time, rules and working conditions pertaining to the classes of employees known as yard foremen and yard helpers (including switch tenders) were determined by contracts between The Chicago River and Indiana Railroad Company and the Brotherhood of Railroad Trainmen entered into from time to time.

12. The Chicago River and Indiana Railroad Company and the defendants have at all material times in question, and for many years prior thereto, handled claims and grievances concerning individual employees of the classes mentioned in accordance with the various agreements and in accordance with the provisions of the Railway Labor Act. Among the claims and grievances presented to The Chicago River and Indiana Railroad Company for disposition were nineteen claims for additional compensation, one claim for reinstatement of a discharged employee, and one claim for reinstatement of an employee to the position of yard foreman. These grievances, disputes and claims were handled on the property of The Chicago River and Indiana Railroad Company in accordance with the various agreements between it and defendants, and in accordance with the provisions of the

Railway Labor Act. All twenty-one claims above referred to were submitted to the superintendent of The Chicago River and Indiana Railroad Company, an officer of that Railroad designated to handle such cases, who considered and ultimately declined each of the twenty-one claims. Each of the said twenty-one claims was appealed to the General Manager of The Chicago River and Indiana Railroad Company, who was designated by that Railroad as the highest [fol. 10] officer to handle such claims under the Railway Labor Act. The said twenty-one claims were heard and considered at various times and were denied by the said officer on various dates between December 20, 1949 and September 4, 1953.

13. There is in effect an agreement of December 12, 1947, by and between the participating carriers represented by the Eastern, Western and Southwestern Carriers' Conference Committee of which The Chicago River and Indiana Railroad Company is one, and the employees represented by the Brotherhood of Railroad Trainmen, Paragraph 4 (c2) of which reads as follows:

"2. This Paragraph Number 2 shall become part of all Schedules, effective February 1, 1948:

"Decision by the highest officer designated by the carrier to handle claims shall be final and binding *unless within one year from date of said officer's decision* such claim is disposed of on the property or proceedings for the final disposition of the claim are instituted by the employe or his duly authorized representative and such officer is so notified. It is understood, however, that the parties may by agreement in any particular case extend the one year period herein referred to." (Italics added).

14. The General Manager's decisions above referred to in twenty of the twenty-one cases became binding within one year of the date of said decision by reason of the failure of the employee involved or his duly authorized representative to institute proceedings for the final disposition of the claims.

15. Defendants heretofore called a strike for six A. M. Monday, June 7th, 1954, in order to coerce The Chicago

River and Indiana Railroad Company into meeting the demands contained in the said twenty-one grievances and claims. The said strike was postponed when the National Mediation Board proffered its services as of June 14, 1954. The efforts of the National Mediation Board to mediate these disputes failed, whereupon the National Mediation Board withdrew on July 15, 1954. In the meantime The Chicago River and Indiana Railroad Company submitted, pursuant to the terms of the Railway Labor Act, each of the said claims to the First Division of the National Railroad Adjustment Board, which has not yet rendered a decision in any of them.

[fol. 11] 16 Notwithstanding The Chicago River and Indiana Railroad Company has complied with every provision of the contracts and agreements between it and defendants, and with every provision of the Railway Labor Act in the handling of these claims and grievances, the defendants, and each of them, have threatened an immediate strike of all employees of the classes of yard foremen and yard helpers (including switch tenders), and have set as a date for said strike July 19, 1954.

17. The said strike threat, if carried into effect, would paralyze The Chicago River and Indiana Railroad Company's railroad operation and prevent the transportation of persons and property over it. The purpose of said strike is to force that Railroad, by the use of self-help by defendants and the employees of that Railroad represented by defendants, to settle grievances or claims for compensation without submitting such disputes or grievances to the National Railroad Adjustment Board, all of which is contrary to law.

It is the public policy of the United States, stated in Section 2, First, of the Railway Labor Act, that it shall be the duty of all carriers, their officers, agents and employees to exert every reasonable effort to make and maintain agreements concerning rates of pay, rules and working conditions, and to settle all disputes whether arising out of the application of such agreements or otherwise, in order to avoid any interruption to commerce or to the operation of any carrier growing out of any dispute between the carrier and the employees thereof. An interruption

of commerce or an interruption of the operations of The Chicago River and Indiana Railroad Company by strike or stoppage, called, led or participated in by defendants pending final and ultimate decision by the National Railroad Adjustment Board would constitute a violation of said public policy. The first and primary purpose of the Railway Labor Act, as stated in General Purpose (1) in Section 2, is "To avoid any interruption to commerce or to the operation of any carrier engaged therein." A strike on The Chicago River and Indiana Railroad Company would interrupt commerce and the operation of all the plaintiff carriers involved herein and would, therefore, violate the purposes of the Railway Labor Act.

18. Plaintiffs allege that the threatened strike is in violation of their constitutional and property rights. Un-[fol. 12] interrupted services of yard foremen and yard helpers are essential to the operation of The Chicago River and Indiana Railroad Company, and stoppage of operations would cause that Railroad thousands of dollars of damages daily and would require it to lay off approximately 1,100 employees who would lose an aggregate amount of money in excess of \$12,000 wages daily for each day of such strike or stoppage. The Chicago River and Indiana Railroad Company will be compelled to embargo shipments into and out of the stock yards of Chicago which would immediately cause irreparable damages to the 600 industries and the 27 railroads served by it. These 27 railroads (the other plaintiffs herein) would incur thousands of dollars of damages for each day of such strike. The adverse effects upon business and the public generally would cost hundreds of thousands of dollars of damages each day the strike is in effect.

19. Defendants and each of them by their threatened actions are in violation of the agreements between plaintiffs and defendants covering the disposition of minor grievances, claims and disputes of this kind, and are in violation of the Railway Labor Act and the Constitution of the United States. The defendants and each of them have failed to exhaust remedies available to them under the Railway Labor Act for the handling and final disposition

of the above claims. In the case of twenty of the twenty-one claims, the decision of the General Manager as the highest officer of the carrier designated to handle such claims has become final and binding by reason of the failure of the employees and of defendants to take action for final disposition within one year from the date of the decision.

20. Plaintiffs are informed and believe that this controversy does not involve a labor dispute within the meaning of the Norris LaGuardia Act (29 U. S. C. 101 et seq.). Plaintiffs are informed and believe that if there is a labor dispute which gives rise to the threatened strike or work stoppage, the threatened acts are unlawful and in violation and defiance of the Railway Labor Act and that the Norris LaGuardia Act has no application in the premises.

21. Notwithstanding that there is no such labor dispute, The Chicago River and Indiana Railroad Company has made every reasonable effort to settle with defendants the twenty-one grievances and claims which underlie the threatened strike or work stoppage through negotiation and through the mediation efforts of the National Mediation Board but defendants have refused to accept the proposals of the Mediation Board and have not joined with The Chicago River and Indiana Railroad Company in submitting the grievances to the National Railroad Adjustment Board as required by the Railway Labor Act.

22. Plaintiffs are without any plain, simple and adequate remedy save in a court of chancery.

Wherefore, Plaintiffs pray:

(1) That the Court issue a preliminary injunction and ultimately a permanent injunction in and by which the defendants and each of them, their agents, servants, counsellors and all acting by, through, or for them, or on their behalf will be enjoined and restrained from conducting any strike, stoppage, or other act of economic coercion to force or coerce The Chicago River and Indiana Railroad Company into settling the claims, grievances and disputes herein referred to which have been filed with the National Railroad Adjustment Board.

(2) That the Court grant plaintiffs such other relief as may be meet, including their costs herein.

Marvin A. Jersild, Wayne M. Hoffman, Kenneth F. Burgess, Douglas F. Smith, Walter J. Cummings, Jr., Attorneys for Plaintiffs.

Sidley, Austin, Burgess & Smith, Of Counsel.

• • • • •

Duly sworn to by Wilber F. Davis. Jurat omitted in printing.

[fol. 14] **EXHIBIT 1 TO AMENDED COMPLAINT**

List of Plaintiffs Herein.

Name	Incorporated in
The Chicago River and Indiana Railroad Company	Illinois
The Atchison, Topeka and Santa Fe Railway Company	Kansas
The Baltimore and Ohio Railroad Company	Maryland
The Baltimore and Ohio Chicago Terminal Railroad Company	Illinois
The Belt Railway Company of Chicago	Illinois
The Chesapeaks and Ohio Railway Company (C & O District)	Virginia
The Chesapeake and Ohio Railway Company (Pere Marquette District)	Virginia
Chicago & Eastern Illinois Railroad Company	Indiana
Chicago and North Western Railway Company	Wisconsin
Chicago and Western Indiana Railroad Company	Illinois
Chicago, Burlington & Quincy Railroad Company	Illinois

Name	Incorporated in
Chicago Great Western Railway Company	Illinois
Chicago, Indianapolis and Louisville Railway Company	Indiana
Chicago Junction Railway Company	Illinois,
Chicago, Milwaukee, St. Paul and Pacific Railroad Company	Wisconsin
Chicago, Rock Island & Pacific Railroad Company	Delaware
Elgin, Joliet and Eastern Railway Company	Illinois, Indiana
Erie Railroad Company	New York
Grand Trunk Western Railroad Company	Michigan, Indiana
Gulf, Mobile and Ohio Railroad Company	Mississippi
[fol. 15]	
Illinois Central Railroad Company	Illinois
Illinois Northern Railway Company	Illinois
Indiana Harbor Belt Railroad Company	Indiana
The Minneapolis, St. Paul & Sault	
Ste. Marie Railroad Company	Minnesota
The New York Central Railroad Company	New York, Pennsylvania, Ohio, Michigan, Indiana, Illinois
The New York, Chicago and St. Louis Railroad Company	New York, Pennsylvania, Indiana, Illinois, Ohio
The Pennsylvania Railroad Company	Pennsylvania
Wabash Railroad Company	Ohio

IN THE DISTRICT COURT OF THE UNITED STATES

MOTION TO VACATE TEMPORARY RESTRAINING ORDER AND TO
DISMISS ACTION—Filed August 2, 1954

Come now Brotherhood of Railroad Trainmen, Brotherhood of Railroad Trainmen Lodge #964, Felix A. Kazmer, General Chairman, Lodge #964, Michael V. Smalley, Secretary, Lodge #964, George C. Hofer, committeeman, Lodge #964, and W. M. Dolan, Vice President, Brotherhood of Railroad Trainmen, all defendants herein, by their attorneys, Henslee, Monek and Murray, by Henry W. Lehmann, and respectfully move this Court to make and enter an order vacating the temporary restraining order granted herein, denying plaintiff's request for a preliminary injunction [fol. 16] or a permanent injunction as well as for any other relief, dismissing the complaint herein, and taxing all costs to the plaintiff on the grounds that:

1. This case involves and grows out of a labor dispute or controversy between the plaintiff carrier and its employees employed as yard foremen and yard helpers (including switch tenders) concerning terms and conditions of employment, namely, claims and grievances relating to compensation of certain of plaintiff's employees and to the reinstatement of two of plaintiff's employees to their former positions as set out in Paragraph 12 of plaintiff's Complaint.

2. The temporary restraining order issued herein on July 16, 1954, pursuant to plaintiff's complaint and the other injunctive relief sought in said complaint prohibits plaintiff's employees from ceasing or refusing to perform any work for plaintiff and from picketing and engaging in other conduct as set forth in the prayer for relief in said complaint and in the said temporary restraining order.

3. Plaintiff does not allege in said complaint or elsewhere that defendants have conducted any of the said activities enjoined by the said temporary restraining order or sought by plaintiff's Complaint to be enjoined, or that the defendants have engaged in any such activities in a manner involving fraud or violence; and in fact defend-

ants have not engaged in such activities either with or without fraud or violence.

4. Pursuant to the provisions of the Norris LaGuardia Act (29 U. S. C. 101 et seq., more particularly Section 104), this Court lacks jurisdiction to issue a restraining order or temporary or permanent injunction which prohibits the conduct which plaintiff here seeks to enjoin as set forth in its Complaint in a case involving or growing out of a labor dispute or controversy concerning terms and conditions of employment.

Respectfully submitted, Henry W. Lehmann, Attorney for Brotherhood of Railroad Trainmen.

Henslee, Monek & Murray, 139 North Clark Street, Suite 810, Chicago 2, Illinois, STate 2-5925.

[fol. 17] IN THE DISTRICT COURT OF THE UNITED STATES

ORDER RE MOTION TO DISMISS—August 6, 1954

This cause coming on for hearing on defendants' Motion to enter an Order that the Motion to Dismiss this Action heretofore filed in this proceeding shall stand as a Motion to Dismiss the Amended Complaint filed herein on August 2, 1954, and to deny the relief therein requested, and the Court having heard arguments of counsel and being fully advised,

It Is Hereby Ordered that the defendants' Motion be granted and that the Motion to Dismiss the Action filed herein stand as a Motion to Dismiss the Amended Complaint filed herein on August 2, 1954 and to deny the relief therein requested.

Enter:

Igoe, Judge.

Dated this 6th day of August, 1954.

IN THE DISTRICT COURT OF THE UNITED STATES

ANSWER TO AMENDED COMPLAINT—Filed August 12, 1954

First Defense

1. The defendants admit the allegations in Paragraphs 1, 2, 3, 4, 5 and 6 of the Amended Complaint.

2. Referring to Paragraph 7 of the Amended Complaint, defendants admit the allegations thereof except that defendants do not have sufficient information to form a belief as to the truth or falsity of the allegation that plaintiffs, other than The Chicago River and Indiana Railroad, would be adversely affected by any stoppage in the operations of The Chicago River and Indiana Railroad, and, therefore, deny the same.

3. Referring to Paragraph 8 of the Amended Complaint, defendants deny that this Court has jurisdiction of this suit. They deny that this is an action arising under the Constitution of the United States on the Fifth Amendment or the laws regulating commerce. They deny that this Court has jurisdiction of this action under the provisions of 28 U. S. C. 1331 and 1337, or of 45 U. S. C. 151 et seq., or 49 U. S. C. 1 et seq., or under any provisions of the aforesaid statutes. These defendants allege that they do not have sufficient information to form a belief as to the truth or falsity of the allegation that this action involves matter in controversy in excess of the sum of Three Thousand Dollars (\$3,000.00) exclusive of interest and costs, and, therefore, deny the same. These defendants further allege that this Court lacks jurisdiction in this action pursuant to the provisions of the Norris LaGuardia Act (29 U. S. C. 101 et seq.)

4. Referring to Paragraph 9 of the Amended Complaint, defendants admit the allegations thereof except that they do not have sufficient information to form a belief as to the truth or falsity of the allegation that The Chicago River and Indiana Railroad Company cannot operate its railroad without the performance of these duties, and therefore, deny the same.

5. Referring to Paragraph 10 of the Amended Complaint, defendants admit that the Railway Labor Act, as amended

from time to time, is applicable to plaintiff. The Chicago River and Indiana Railroad Company and its employees represented by defendants, and to the other plaintiffs and the employees of the other plaintiffs represented by defendants to the extent and in the manner set forth in said legislation. Defendants admit that the Railway Labor Act (45 U. S. C. 151(a)) states its general purposes to be, among others, to avoid any interruption to commerce or to operation of any carrier engaged therein and to provide for the prompt and orderly settlement of all disputes growing out of grievances or out of the interpretation or application of agreements covering rates of pay, rules and [fol. 19] working conditions. Defendants deny the allegations of the second sub-paragraph of Paragraph 10 of the Amended Complaint and each and every allegation thereof. Defendants deny that Congress has established a compulsory administrative machinery under the Railway Labor Act or that parties to a collective agreement are required by said Act to submit controversies such as those here involved to the National Railroad Adjustment Board as set forth in said paragraph without resorting to self-help. Defendants allege that the procedures and administrative machinery set up under the Railway Labor Act are voluntary and that said Act does not prohibit strikes and other concerted labor union activity.

6. Defendants admit the allegations of Paragraph 11 of the Amended Complaint.

7. Referring to Paragraph 12 of the Amended Complaint, defendants admit the allegations thereof except that particular allegation therein that the nineteen claims for additional compensation, the one claim for reinstatement of an employee to the position of yard foreman and the one claim for reinstatement of a discharged employee were handled on the property in accordance with the various agreements between The Chicago River and Indiana Railroad Company and defendants, and in accordance with the provisions of the Railway Labor Act, which allegation is herewith denied. Defendants allege with respect thereto that contrary to the provisions of the Railway Labor Act, as amended, The Chicago River and Indiana Railroad Company has failed to exert every reasonable effort to settle

the twenty-one claims and grievances concerning the terms and conditions of employment of employees of said plaintiff as aforesaid.

8. Defendants admit the allegations of Paragraph 13 of the Amended Complaint.

9. Referring to Paragraph 14 of the Amended Complaint, defendants deny that the decisions of the General Manager of The Chicago River and Indiana Railroad Company became binding in twenty of the twenty-one claims as asserted by plaintiffs in the Amended Complaint. Defendants allege that The Chicago River and Indiana Railroad Company had agreed to continue to negotiate with respect to certain of these claims after a year had elapsed since the decision of the General Manager with respect to said claims and that customarily The Chicago River and Indiana Railroad Company has not in negotiations with defendants concerning claims and grievances invoked the one year time limitation of Paragraph 4 (c2) of the agreement of December 12, 1947 set forth in Paragraph 13 of the Amended Complaint.

10. Referring to Paragraph 15 of the Amended Complaint, defendants admit the allegations contained therein except that defendants deny that they called a strike to coerce The Chicago River and Indiana Railroad Company into meeting the demands contained in the said twenty-one grievances and claims. Defendants further allege that The Chicago River and Indiana Railroad Company submitted these claims to the National Railroad Adjustment Board on July 15, 1954, and that the sole issue raised by The Chicago River and Indiana Railroad Company in all of said submissions except one was the applicability to said claims and grievances of the one year time limit of Paragraph 4 (c2) of the agreement of December 12, 1947 set forth in Paragraph 13 of the Amended Complaint. Defendants further allege that defendants and the employees of The Chicago River and Indiana Railroad Company represented by defendants have not gone on strike but have strictly complied with the terms of the temporary restraining order herein issued on July 16, 1954 prohibiting any work stoppage and other concerted activity as therein set forth.

11. Referring to Paragraph 16 of the Amended Complaint, defendants admit the allegations thereof except that defendants deny that The Chicago River and Indiana Railroad Company has complied with its contracts and agreements with defendants or with the provisions of the Railway Labor Act in the handling of the aforesaid twenty-one claims and grievances.

12. Referring to Paragraph 17 of the Amended Complaint, these defendants allege that they do not have sufficient information to form a belief as to the truth or falsity of the allegation that said strike would paralyze the railroad operation of The Chicago River and Indiana Railroad Company and prevent the transportation of persons and property over it, and therefore, deny the same. Defendants allege that the strike was called to settle said claims and grievances equitably and speedily through collective bargaining and because of the refusal and failure of The Chicago River and Indiana Railroad Company to exert reason-[fol. 21] able efforts to settle the twenty-one grievances, as required by the Railway Labor Act, as amended. Defendants deny that the purpose of said strike is to force The Chicago River and Indiana Railroad Company by use of self-help to settle grievances or claims for compensation without submitting such grievances or claims to the National Railroad Adjustment Board but admit that the effect of the strike, if successful, would be settlement of said grievances through collective bargaining instead of by award of the National Railroad Adjustment Board. Defendants admit that the first sentence of the second sub-paragraph of Paragraph 17 of the Amended Complaint sets forth the language of Section 152 First of the Railway Labor Act, as amended. Defendants deny that a work stoppage under the circumstances of this case called, led or participated in by defendants pending final and ultimate decision by the National Railroad Adjustment Board would constitute a violation of any public policy set forth in the Railway Labor Act and further deny that the Railway Labor Act, as amended from time to time, prohibits the work stoppage called for July 19, 1954, which plaintiffs herein have petitioned the Court to enjoin. Defendants admit that the third sentence of the second sub-paragraph

of Paragraph 17 of the Amended Complaint sets forth the language of one of the purposes declared by the Railway Labor Act. Defendants deny that said matter in the said sentence constitutes the first and primary purpose of the Railway Labor Act and allege that said matter constitutes only one of several equally important purposes of the Railway Labor Act. Defendants allege that they do not have sufficient knowledge to form a belief as to the truth or falsity of the allegation that a strike in The Chicago River and Indiana Railroad Company would interrupt commerce and the operation of all the plaintiff carriers involved herein and, therefore, deny the same. Defendants deny that a strike on The Chicago River and Indiana Railroad Company under the circumstances of this case would violate the purposes of the Railway Labor Act and further deny that the Railway Labor Act, as amended from time to time, prohibits the strike called for July 19, 1954 which plaintiffs herein have petitioned this Court to enjoin.

13. Referring to Paragraph 18 of the Amended Complaint, defendants deny that the strike called for July 19, [fol. 22] 1954 is in any way a violation of the constitutional or property rights of the plaintiffs herein or any of them. As to the other allegations in Paragraph 18, defendants allege that they do not have sufficient information to form a belief as to the truth or falsity thereof and, therefore, deny the same.

14. Referring to Paragraph 19 of the Amended Complaint, defendants deny that the strike called for July 19, 1954 or that any concerted activities planned in connection therewith were or are in violation of the agreements between The Chicago River and Indiana Railroad Company and defendants. Defendants deny that any of their actions as aforesaid are in violation of any agreements between defendants and the other plaintiffs herein, and defendants allege that the plaintiffs other than The Chicago River and Indiana Railroad Company are not parties to the dispute concerning the twenty-one claims and grievances referred to hereinabove. Defendants further deny that any such actions are in violation of either the Railway Labor Act or of the Constitution of the United States. Defendants admit that they have not filed submissions of the

twenty-one grievances herein involved with the National Railroad Adjustment Board but allege that the Railway Labor Act, as amended from time to time, does not impose any legal compulsion upon defendants to submit grievances or claims to said Board. Defendants deny that the decisions of the General Manager of The Chicago River and Indiana Railroad Company with respect to the claims here involved are final or binding.

15. Referring to Paragraph 20 of the Amended Complaint, defendants deny the allegation thereof. Defendants allege that this controversy grows out of and involves a labor dispute within the meaning of the Norris LaGuardia Act (29 U. S. C. 101 et seq.) and that under said statute this Court lacks jurisdiction to issue a temporary restraining order or a preliminary or permanent injunction in this proceeding. Defendants deny that any acts by them in relation to the work stoppage or strike called for July 19, 1954, are unlawful or in violation or in defiance of the Railway Labor Act or any of its provisions, and allege that the Norris LaGuardia Act applies to this proceeding.

16. Referring to Paragraph 21 of the Amended Complaint, defendants admit that the twenty-one grievances or claims involved in this proceeding underlie the work stoppage or strike called for July 19, 1954. Defendants [fol. 23] allege that neither the Railway Labor Act, as amended from time to time, nor any other law, impose a legal compulsion upon defendants or other labor organization to accept proposals of the Mediation Board or to join in submitting grievances to the National Railroad Adjustment Board and further allege that they have not refused to accept any reasonable proposals of said Board. Defendants deny that The Chicago River and Indiana Railroad Company has made every reasonable effort to settle the twenty-one grievances herewith involved and defendants further deny that they or any of them have in any way failed to comply with any of the requirements imposed by the Railway Labor Act.

17. Defendants deny the allegations of Paragraph 22 of the Amended Complaint.

Second Defense

The Amended Complaint fails to state a claim against defendants or any of them upon which relief can be granted.

Third Defense

This Court lacks jurisdiction, pursuant to the provisions of the Norris LaGuardia Act (29 U. S. C. 101 et seq.) to grant the relief prayed for in the Amended Complaint.

Wherefore defendants pray that this Court vacate the temporary restraining order issued on July 16, 1954, that it deny plaintiffs both the preliminary and permanent injunction requested by it, that it dismiss the Amended Complaint, and that costs be taxable to plaintiffs and execution leveled therefore.

Brotherhood of Railroad Trainmen, Brotherhood of Railroad Trainmen Lodge 964, Felix E. Kazmer, General Chairman Lodge 964, George C. Hofer, Committeeman Lodge 964, Michael V. Smalley, Secretary Lodge 964, W. M. Dolan, Vice President, Brotherhood of Railroad Trainmen, Defendants, By Henry W. Lehmann, Their Attorney. Henslee, Monek & Murray, 139 North Clark Street, Chicago 2, Illinois, STate 2-5925.

[fol. 24] *Duly sworn to by Felix E. Kazmer. Jurat omitted in printing.*

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IN THE DISTRICT COURT OF THE UNITED STATES

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MOTION FOR PRELIMINARY INJUNCTION—
Filed August 13, 1954

Now come the plaintiffs, The Chicago River and Indiana Railroad Company, et al., and move this Court to enter an

order for a preliminary injunction against the above-named defendants. The grounds for this motion are:

1. Plaintiffs allege and defendants admit that defendants have called a strike to obtain a settlement of grievances rather than process said grievances in the National Railroad Adjustment Board.

2. The Railway Labor Act (45 U.S.C. Sec. 151 *et seq.*) provides mandatory procedure for the settlement of grievances, which procedure is to process them through the National Railroad Adjustment Board, if the claimants wish to go further than "the chief operating officer of the carrier designated to handle such disputes" (Sec. 3 First (i)).

[fol. 25] 3. The effect of the threatened strike by defendants would be to coerce the settlement of these grievances in a manner contrary to the command and purposes of the Railway Labor Act.

4. The commands of the Railway Labor Act are enforceable by judicial action, and the only way to obtain enforcement of the Act in this case is to enjoin this strike so that the parties may proceed under the Act.

5. The duties of the employees whose services will be suspended by the threatened strike are essential to the operation of the plaintiff Chicago River and Indiana Railroad Company. A strike of those employees will halt operations on that railroad, will halt essential shipments of perishable foodstuffs and other goods on the other plaintiff railroads, and will cause damage to all of the plaintiffs of thousands of dollars a day and to the public of even more, all of which is irreparable.

6. Maintenance of the *status quo* would not do any substantial harm to defendants, since the statutory procedures for the settlement of these grievances will continue to be open to them, and it is to the interest of the employees represented by defendants to explore every means of avoiding a cessation of their work.

Wherefore, for the above reasons and for the reasons stated in their verified Amended Complaint, plaintiffs pray this Court for a preliminary injunction, in the interests of

justice and to maintain the *status quo*, enjoining defendants from carrying out the threatened strike.

Marvin A. Jersild, Wayne M. Hoffman, William K. Bachelder, Kenneth F. Burgess, Douglas F. Smith, Walter J. Cummings, Jr., Attorneys for Plaintiffs.

Sidley, Austin, Burgess & Smith, Of Counsel.

[fol. 26] FEDERAL REPUBLIC OF GERMANY,
City of Munich,

United States Consular Service, ss.

AFFIDAVIT OF M. W. CLEMENT

M. W. Clement, being first duly sworn, on oath deposes and says that:

1. He resides in Rosemont, Pennsylvania.
2. At the time Congress enacted the 1934 amendments to the Railway Labor Act, he was chairman of the committee of railroads delegated to deal with that legislation. As such, he officially represented all Class I railroads in the United States and was selected to give their views to the Senate and House Committees considering that legislation.
3. In that capacity, he became very familiar with the proposed legislation and conferred thereon with representatives of government and labor.
4. Some of the principal purposes of the Railway Labor Act, as amended in 1934, were "To avoid any interruption to commerce or to the operation of any carrier engaged therein" and "to provide for the prompt and orderly settlement of all disputes growing out of grievances or out of the interpretation or application of agreements covering rates of pay, rules, or working conditions."
5. The 1934 legislation established the National Railroad Adjustment Board to adjudicate disputes growing out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions."
6. Under that legislation, when employees and carriers fail to reach an adjustment of such disputes and wish to have them settled, the disputes must be referred to the

National Railroad Adjustment Board for decision pursuant to Section 3 First (i) of the Railway Labor Act.

7. In order to avoid interruptions to commerce, the Railway Labor Act, as amended in 1934, established the National Railroad Adjustment Board to decide such disputes and prohibited strikes over them. Congress substituted [fol. 27] administrative processes for strikes in this area.

Further affiant sayeth not.

FEDERAL REPUBLIC OF GERMANY,
Land Bavaria,
City of Munich,
Consulate General of the
United States of America, ss.

M. W. Clement

Subscribed and sworn to before me this 9 day of August, 1954.

United States Consular Service. Thomas A. DeHart, American Vice Counsel. (Seal)

Foe No. 24.

Service No. 4804.

\$2.00 equal to 8-40 Marks. \$2.00 Stamp.

STATE OF ILLINOIS,
County of Cook, ss.

AFFIDAVIT OF WILBER F. DAVIS

Wilber F. Davis, being first duly sworn, on oath deposes and says that:

1. He resides in Hammond, Indiana, and has his office in Chicago, Illinois.

2. He is General Manager of The Chicago River and Indiana Railroad Company, and has been such since April, 1953.

3. In that capacity, and because of his background of many years in the railroad industry, he has become very familiar with the operations of this plaintiff and the other plaintiffs. He has read and verified the Amended Complaint in this action.

4. The Chicago River and Indiana Railroad Company cannot operate its railroad without the performance of the duties of yard foremen and yard helpers.

5. Stoppage of the performance of the duties of yard foremen and yard helpers would stop operation of the Chicago River and Indiana Railroad. This would cause [fol. 28] that Railroad to lose thousands of dollars daily. It would require it to lay off approximately 1,100 employees. It would force it to embargo shipments into and out of the stockyards of Chicago, which would mean to embargo shipments to and from the 27 other plaintiff railroads in this action.

6. He and his subordinates on The Chicago River and Indiana Railroad Company exerted every reasonable effort to settle the twenty-one grievances stated in the above-mentioned Amended Complaint.

7. The effect of a strike on these railroads will be such that he knows of no other adequate redress than the relief sought.

Further affiant sayeth not.

Wilber F. Davis,

Subscribed and sworn to before me this 10th day of August, 1954.

L. E. Matthews, Notary Public. (Seal)

UNITED STATES DISTRICT COURT

BOND—Approved August 17, 1954

Know All Men by These Presents, that we, The Chicago River and Indiana Railroad Company, an Illinois Corporation, et al., as principals, and Hartford Accident and Indemnity Company, a Connecticut Corporation, as Surety, are held and firmly bound unto Brotherhood of Railroad Trainmen, Lodge #964, Brotherhood of Railroad Trainmen, a Voluntary Association, Felix E. Kazmer, General Chairman, Lodge #964, Michael V. Smalley, Secretary, Lodge #964, George C. Hofer, Committeeman, Lodge

#964; W. M. Dolan, Vice President, Brotherhood of Railroad Trainmen, Defendants in the above entitled cause, in the sum of Twenty Thousand (\$20,000.00) Dollars, to the payment of which we bind ourselves, our successors, and assigns, firmly by these presents.

[fol. 29] The condition of the above obligation is such that whereas The Chicago River and Indiana Railroad Company, et al., plaintiffs in the above entitled cause, have obtained from the District Court of the United States for the Northern District of Illinois, Eastern Division, a temporary restraining order to enjoin defendants as prayed for in the complaint and amended complaint in the above entitled cause, upon condition that the said plaintiffs shall execute and file a good and sufficient bond to the said defendants for the sum of Twenty Thousand (\$20,000.00) Dollars to secure the payment of such costs and damages as may be incurred or suffered by any party who may be found to have been wrongfully enjoined or restrained thereby.

Now, if the above bounden, The Chicago River and Indiana Railroad Company, et al., and Hartford Accident and Indemnity Company shall well and truly pay all such costs and damages as may be incurred or suffered by any party who may be found to have been wrongfully enjoined or restrained by reason of said temporary restraining order should it be thereafter dissolved or it be decided that such temporary restraining order was wrongfully obtained, then this obligation to be void, otherwise to remain in full force and virtue.

Sealed and dated this 17th day of August, 1954 on behalf of all of the plaintiffs in the above entitled cause.

The Chicago River and Indiana Railroad Company,
By D. A. Fawcett, Vice President. Hartford Accident and Indemnity Company, Thomas F. Doyle,
Thomas F. Doyle, Attorney-in-fact. (Seal)

Approved: August 17, 1954. John P. Barnes.

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[fol. 30] UNITED STATES DISTRICT COURT

Chicago 4

MEMORANDUM OF COURT, KNOCH, J.—March 21, 1955

Chambers of Judge Win. G. Knoch, Mr. William K. Bachelder, Mr. Kenneth F. Burgess, Mr. Douglas F. Smith, Mr. Walter J. Cummings, Jr., Sidley, Austin, Burgess & Smith, 11 South LaSalle Street, Chicago 3, Illinois.

Mr. Henry W. Lehmann, Henslee, Monek & Murray, 130 N. Clark Street, Chicago 2, Illinois.

Mr. Marvin A. Jersild, Mr. Wayne M. Hoffmann, Suite 1236 LaSalle Station, Chicago 6, Illinois.

Re: The Chicago River and Indiana Railroad Company, et al, plaintiffs, vs. Brotherhood of Railroad Trainmen, et al, defendants. Case No. 54 C 1024.

Gentlemen:

This matter came on to be heard on defendants' motion to vacate temporary restraining order heretofore issued in this cause.

I have devoted a great deal of thought and consideration to the questions raised in connection with this motion, having due regard for the gravity of the matter.

I have had the benefit of your arguments presented verbally and upon briefs and have studied closely all authorities to which reference was made.

[fol. 31] It is my considered opinion that the Norris-LaGuardia Act is applicable in the present case and that this Court lacks jurisdiction to grant the relief sought by plaintiffs.

Accordingly an order is being entered this date dissolving the temporary restraining order and dismissing the action.

Yours truly, Win G. Knoch, United States District Judge.

WGK:f

UNITED STATES DISTRICT COURT

ORDER OF DISMISSAL—March 21, 1955

On motion of the defendants by their counsel it is Ordered that the temporary restraining order heretofore entered herein be and the same hereby is dissolved and it is Further Ordered that this cause be and the same hereby is dismissed.

[fol. 32] IN THE DISTRICT COURT OF THE UNITED STATES
For The Northern District Of Illinois
Eastern Division

[Title omitted]

NOTICE OF APPEAL—Filed April 19, 1955

Notice is hereby given that all the plaintiffs in this cause hereby appeal to the United States Court of Appeals for the Seventh Circuit from the order dismissing this action entered herein on March 21, 1954.

(S.) Marvin A. Jersild, (S.) Wayne M. Hoffman,
(S.) William K. Bachelder, (S.) Kenneth F. Burgess, (S.) Douglas F. Smith, (S.) Walter J. Cummings, Jr., Attorneys for Appellants, 11 South La-Salle Street, Chicago 3, Illinois, STate 2-5400.
Sidley, Austin, Burgess & Smith, Of Counsel.

[fol. 33] CERTIFICATE OF MAILING (Omitted in Printing)

UNITED STATES DISTRICT COURT

STATEMENT OF POINTS ON APPEAL—Filed April 19, 1955

Appellants, plaintiffs in the above-named action, state that the points on which they intend to rely in this action are:

1. The Court erred in holding that this action should be dismissed because the Norris-LaGuardia Act applied and the Court lacked jurisdiction to grant the relief sought by plaintiffs.

[fol. 34] 2. The Court erred in not granting to plaintiffs a preliminary injunction.

3. The Court erred in dismissing this action.

4. The Court erred in not holding that under the Railway Labor Act, grievances prosecuted beyond the designated chief operating officer of the carrier are to be resolved by the National Railroad Adjustment Board rather than by strike.

(S.) Marvin A. Jersild, (S.) Wayne M. Hoffman,
 (S.) Kenneth F. Burgess, (S.) Douglas F. Smith,
 (S.) Walter J. Cummings, Jr., (S.) William K.
 Bachelder, Attorneys for Appellants, 11 South La-
 Salle Street, Chicago 3, Illinois, STate 2-5400.

Of Counsel: Sidley, Austin, Burgess & Smith, 11 South LaSalle Street, Chicago 3, Illinois.

Service of a copy of the foregoing statement of points on appeal acknowledged this 19th day of April, 1955.

Henry W. Lehmann, Attorney for Appellees.

UNITED STATES DISTRICT COURT

DESIGNATION OF RECORD ON APPEAL—Filed April 19, 1955

To the Clerk of the United States District Court for the Northern District of Illinois:

Pursuant to Rule 75(a) of the Federal Rules of Civil Procedure, appellants, plaintiffs in this action, designate

the following portions of the record in the above-entitled [fols. 35-41] cause as the record on appeal in this action to The United States Court of Appeals for the Seventh Circuit:

1. Amended Complaint.
2. Motion to vacate temporary restraining order and to dismiss action, dated July 28, 1954.
3. Order of August 6, 1954, that motion to dismiss action shall stand as a motion to dismiss amended complaint.
4. Answer to Amended Complaint.
5. Motion for preliminary injunction, dated August 13, 1954, and the two affidavits attached thereto.
6. Bond, filed August 17, 1954.
7. Judge Knoch's letter of March 21, 1955, to counsel containing opinion as to disposal of case.
8. Order of March 21, 1955, dismissing case.
9. The Notice of Appeal.
10. This designation of points on appeal.
11. Statement of points on appeal.

(S.) Marvin A. Jersild, (S.) Wayne M. Hoffman,
 (S.) Kenneth F. Burgess, (S.) Douglas F. Smith,
 (S.) Walter J. Cummings, Jr., (S.) William K.
 Bachelder, Attorneys for Appellants.

Of Counsel: Sidley, Austin, Burgess & Smith, 11 South
 LaSalle Street, Chicago 3, Illinois. STate 2-5400.

Acknowledgment of Service

Service of above Designation acknowledged this 19th day
 of April, 1955.

Henry W. Lehmann.

[fol. 42] Clerk's Certificate to foregoing transcript
 omitted in printing.

[fol. 43] IN THE UNITED STATES COURT OF APPEALS FOR THE
SEVENTH CIRCUIT, OCTOBER TERM, 1955—JANUARY SESSION,
1956

No. 11474

Appeal from the United States District Court for the
Northern District of Illinois, Eastern Division.

THE CHICAGO RIVER AND INDIANA RAILROAD COMPANY, *et al.*,
Plaintiffs-Appellants,

v.

BROTHERHOOD OF RAILROAD TRAINMEN, *et al.*, *Defendants-
Appellees*

OPINION—February 6, 1956

Before FINNEGAN, LINDLEY and SCHNACKENBERG, *Circuit
Judges*.

SCHNACKENBERG, *Circuit Judge*. By amended complaint the Chicago River and Indiana Railroad Company¹ and 27 other railroads prayed for an injunction to restrain the Brotherhood of Railroad Trainmen² from calling a threatened strike against the River Road. Trainmen's counsel state that the purpose of said strike is to settle 21 grievances and claims through collective bargaining rather than by an award of the National Railroad Adjustment Board.³ The district court granted a restraining order which was later dissolved when the court decided that the Norris-LaGuardia act was applicable and, therefore, it lacked jurisdiction to grant the relief sought. It dismissed the cause. The court subsequently granted an injunction pending the determination of this appeal, which was taken from the judgment of dismissal.

[fol. 44] The grievances of the employees involved are 19 claims for additional compensation, 1 claim for reinstatement to a higher position, and 1 claim for reinstatement to the employ of the River Road. Each of these claims was

¹ Sometimes referred to herein as "River Road".

² Sometimes referred to herein as "Trainmen".

³ Sometimes referred to herein as the "Board".

presented to the railroad superintendent who handles such cases.. Each was appealed to the highest railroad officer designated to handle claims under § 3 First (i) of the Railway Labor Act (45 U. S. C. A. § 153 First (i)), and was denied by him.

The amended complaint charges that this strike would halt the operations of all trains into and out of the Chicago Stockyards, force the River Road to lay off 1,100 employees, who would lose in excess of \$12,000 a day in wages, cost the company thousands of dollars a day, and require the embargo of all shipments into and out of the Stockyards, causing irreparable damage to the 27 railroads (the other plaintiffs) and the 600 industries served. The Trainmen's answer alleges that they do not have sufficient information to form a belief as to the truth or falsity of these charges and, therefore, they deny the same. The amended complaint was dismissed without the taking of evidence.

The amended complaint and the answer show that the River Road, on July 15, 1954, submitted to the Board the claims in dispute and the Board has not yet rendered a decision on any of them.

The first contested issue herein, as stated by the Trainmen, is: "Does the Railway Labor Act prohibit a union from striking over claims and grievances, matters which are within the jurisdiction of the National Railroad Adjustment Board?" Plaintiffs say that it is mandatory under the Railway Labor Act that minor disputes⁴ be adjusted instead of being made the subject of a strike. They contend that such command must be enforced, even though the act itself does not provide enforcement machinery, and that an injunction is appropriate to this end. The Trainmen contend that the Railway Labor Act does not prohibit a union from striking over claims and grievances though such matters are within the jurisdiction of the Board. Their answer avers that the effect of the strike, if successful, would be settlement of said disputes through collective bargaining instead of by award of the Board.

[fol. 45] 1(a). The Railway Labor Act of 1926, as

⁴ It is agreed that the claims and grievances which are the subject of the suit at bar are all so-called "minor disputes".

amended in 1934,⁵ expressly states its purposes,⁶ the first of which is "To avoid any interruption to commerce or to the operation of any carrier engaged therein;" and the fifth of which is "to provide for the prompt and orderly settlement of all disputes growing out of grievances * * *."

The difference between disputes over grievances and disputes concerning the making of collective agreements is traditional in railway labor affairs. It has assumed large importance in the Railway Labor Act of 1934, substantively and procedurally. *Elgin, J. & E. R. Co. v. Burley*, 325 U. S. 711, at 722. As to disputes over grievances, the act contemplates the existence of a collective agreement already concluded or, at any rate, a situation in which no effort is made to bring about a formal change in terms or to create a new one. Such a dispute relates either to the meaning or proper application of a particular provision with reference to a specific situation or to an omitted case. So-called minor disputes, involving grievances, the 1934 act sets apart from major disputes and provides for them very different treatment. The court said, (*ibid* 724):

"The Act treats the two types of dispute alike in requiring negotiation as the first step toward settlement and therefore in contemplating voluntary action for both at this stage, in the sense that agreement is sought and cannot be compelled. To induce agreement, however, the duty to negotiate is imposed for both grievances and major disputes."

Beyond the initial stages of negotiation and conference, however, the procedures diverge. 'Major disputes' go first to mediation under the auspices of the National Mediation Board; if that fails, then to acceptance or rejection of arbitration, cf. § 7; *Trainmen v. Toledo, P. & W. R. Co.*, 321 U. S. 50; and finally to possible presidential intervention to secure adjustment. § 10. For their settlement the statutory scheme retains throughout the traditional voluntary processes of negotiation, mediation, voluntary arbitration, and conciliation. Every facility for bringing about agree-

⁵ 45 U. S. C. A. § 151 et seq.

⁶ *Ibid*, § 151a.

ment is provided and pressures for mobilizing public opinion are applied. The parties are required to submit to the successive procedures designed to induce [fol. 46] agreement. § 5 First (b). But compulsions go only to insure that those procedures are exhausted before resort can be had to self-help. No authority is empowered to decide the dispute and no such power is intended, unless the parties themselves agree to arbitration.

The course prescribed for the settlement of grievances is very different beyond the initial stage. Thereafter the Act does not leave the parties wholly free, at their own will, to agree or not to agree. On the contrary, one of the main purposes of the 1934 amendments was to provide a more effective process of settlement.

Prior to 1934 the parties were free at all times to go to court to settle these disputes. * * * Several organizations took strike ballots and thus threatened to interrupt traffic, a factor which among others induced the Coordinator of Transportation to become the principal author and advocate of the amendments. The sponsor in the House insisted that Congress act upon them before adjournment for fear that if no action were taken a railroad crisis might take place * * *, the Adjustment Board was created and given power to decide them."

The court then said, (ibid 727):

"The procedure adopted is not one of mediation and conciliation only, like that provided for major disputes under the auspices of the Mediation Board. Another tribunal of very different character is established with 'jurisdiction' to determine grievances and make awards concerning them. Each party to the dispute may submit it for decision, whether or not the other is willing, provided he has himself discharged the initial duty of negotiation. § 3 First (i). Rights of notice, hearing, and participation or representation are given. § 3 First (j). In some instances judicial review and enforcement of awards are expressly pro-

vided or are contemplated. § 3 First (p); cf. § 3 First (m). When this is not done, the Act purports to make the Board's decision 'final and binding.' § 3 First (m)."

The procedure prior to 1934 was in fact and effect nothing more than one for voluntary arbitration. No dispute could be settled unless submitted by agreement of all parties. The Board was created to remove the settlement of [fol. 47] grievances from this stagnating process and bring them within a general and inclusive plan of decision. The aim was not to dispense with agreement. It was to add decision where agreement fails and thus to safeguard the public as well as private interests against the harmful effects of the preexisting scheme. *Elgin, J. & E. R. Co. v. Burley, supra*, 727.

At a hearing before a senate committee on the bill for the 1934 amendments, the Railroad Brotherhoods' representative Mr. Harrison, stated:

"These railway labor organizations have always opposed compulsory determination of their controversies. We have lived a long time and got a lot of experience, and we know that these minor cases that develop out of contracts that we make freely, and * * * we are now ready to concede that we can risk having our grievances go to a board and get them determined, and that is a contribution that these organizations are willing to make." (*ibid* 728, note 24)

As to major disputes, the act requires the parties to submit to the successive procedures designed to induce agreement. § 5 First (b). But compulsions go only to insure that those procedures are exhausted before resort can be had to self-help. That means, that as to disputes over the formation of collective agreements or efforts to secure or change them, the issue not being whether an existing agreement controls the controversy, the act recognizes the right of employees to strike, but postpones such action until the successive procedures set up by the act have been exhausted. No authority is empowered to decide this dispute, unless the parties agree to arbitration.

On the other hand, as to minor disputes, such as those relating to grievances and claims, either party may submit a dispute to the Board for decision, *whether or not the other is willing*, provided he himself has discharged the initial duty of negotiation. Except in instances where judicial review and enforcement of awards are expressly provided for or contemplated by the act (§ 3 First (p); cf. § 3 First (m)), the Board's decisions are final and binding. We hold this to mean that a strike in regard to such minor disputes, or the Board's decisions thereon, would be illegal.

(b). Plaintiffs contend that, inasmuch as it is mandatory under the Railway Labor Act that grievances be adjusted [fol. 48] on a submission by either party and that they cannot be the subject of a strike, such command must be enforced, even though the act itself does not provide enforcement machinery. The Trainmen deny this conclusion, "because no provision of the Railway Labor Act prohibits a strike over grievances * * *."

In speaking of the Railway Labor Act of 1926, in *Texas & N. O. R. Co. v. Ry. Clerks*, 281 U. S. 548, the court was discussing an injunction granted by a district court restraining the railroad company from interfering with its clerical employees in the matter of their organization for the purposes set forth in that act. At 569, it said:

"The creation of a legal right by language suitable to that end does not require for its effectiveness the imposition of statutory penalties. Many rights are enforced for which no statutory penalties are provided. * * * The right is created and the remedy exists."

The court affirmed the decree granting the injunction. To the same effect are *Virginian Ry. v. Federation*, 300 U. S. 515, *Steele v. L. & N. R. Co.*, 323 U. S. 192, at 207, and *Brotherhood of Railroad Trainmen v. Howard*, 343 U. S. 768.

We, therefore, hold that the district court has jurisdiction to issue an injunction restraining the Trainmen from striking over grievances and claims, unless the Norris-La-Guardia act prevents or limits the court's power so to do.

2. The Trainmen say that the second contested issue

herein is: "Did the Trial Court err in holding that the Norris-LaGuardia Act was applicable and that it therefore lacked jurisdiction to grant the relief sought by the plaintiffs?" Plaintiffs respond that the Norris-LaGuardia act does not prevent the federal courts from issuing injunctions to enforce compliance with the provisions of the Railway Labor Act. The Trainmen argue that the Norris-LaGuardia act has divested the trial court of jurisdiction to grant the injunction sought against the threatened strike. They take the position that "no restraining order or injunction can be issued enjoining any actual or threatened strike unless the terms and conditions of the Norris-LaGuardia Act are fully complied with. Defendants so contend that such is the law even assuming that the provisions of the Railway Labor Act, here involved, will be violated by the threatened strike."

[fol. 49] In enacting the Norris-LaGuardia act in 1932⁷ congress sought to correct many of the alleged abuses of the injunctive remedy which labor disputes had brought to national prominence during the quarter century preceding the act. In so doing congress purported to cover the general area comprehended by the term "labor dispute" irrespective of the parties involved or the possibilities of any special situation which might arise. The vital and unique position of the railroad industry in the economy of this country, coupled with experience acquired after the act's enactment, demonstrated in 1934 the need for special methods and techniques of handling labor disputes affecting railroads which were so distinctive as to require special treatment in the public interest.

Accordingly, the 1934 amendments to the Railway Labor Act were enacted. They provided *inter alia* for compulsory and determinative adjustment of minor disputes. As we have already seen, the compulsory features of the Railway Labor Act are enforceable by injunctions issued by the federal district courts. We cannot presume that congress, in so amending the Railway Labor Act in 1934, intended that such an injunction could not issue unless compliance

⁷ 29 U. S. C. A., § 101 et seq.

was first had with the act of 1932 dealing with the general subject of injunctions in labor disputes.

The Railway Labor Act, as amended in 1934, embodies a complete plan for avoiding any interruption to commerce or to the operation of any carrier engaged therein.* It is directed to the needs of the railroad industry, employers and employees alike, having in mind the paramount interest of the public. It does not call for the aid of, or submit to, the limitations of the Norris-LaGuardia act. Indeed, the provisions in regard to injunctions prohibiting strikes in labor disputes, as contained in the Norris-LaGuardia act, if controlling in a situation such as we have here, arising under the Railway Labor Act, would practically render the compulsory features of the latter act nugatory. We are unimpressed with the argument of Trainmen's counsel that damages suffered by the many persons who might be injured by such a strike could be compensated in private suits brought therefor. A right to relief by suit for damages in such a situation would be an illusory remedy and a poor protection of the public interest. The effect of a strike against the railroads of the nation requires the expeditious intervention of a court to safeguard that interest. This can be accomplished only by the prompt employment of a court's equitable powers, primarily its injunctive power. The compulsion inherent in the Railway Labor Act requires prompt and effective use of judicial machinery and, there being no clear intention contained in that act to the effect that the Norris-LaGuardia act prohibits or limits the issuance of injunctions to implement the Railway Labor Act, we hold that the Norris-LaGuardia act does not apply to the case at bar.

As was said in *Cook County National Bank v. United States*, 107 U. S. 445, 27 L. Ed., 537, at 539:

"A law embracing an entire subject, dealing with it in all its phases, may thus withdraw the subject from the operation of a general law as effectually as though, as to such subject, the general law were in terms repealed. The question is one respecting the intention of the Legislature."

* 45 U. S. C. A., § 151a.

When considering the effect of the 1934 amendment which added new provisions in § 2, Ninth, of the Railway Labor Act, in *Virginian Ry. v. Federation*, 300 U. S. 515, at 545, the court said:

“Neither the purposes of the later Act, as amended, nor its provisions when read, as they must be, in the light of our decision in the *Railway Clerks* case, *supra*, lend support to the contention that its enactments, which are mandatory in form and capable of enforcement by judicial process, were intended to be without legal sanction.”

The court held that a decree for a mandatory injunction granted by a district court, for the purpose of enforcing the provisions of § 2, Ninth, of said act, was proper, saying, at 552:

“More is involved than the settlement of a private controversy without appreciable consequences to the public. The peaceable settlement of labor controversies, especially where they may seriously impair the ability of an interstate rail carrier to perform its service to the public, is a matter of public concern. That is testified to by the history of the legislation now before us, the reports of committees of Congress having the proposed legislation in charge, and by our common knowledge. Courts of equity may, and frequently do, go much farther both to give and withhold relief in furtherance of the public interest than they are accustomed to go when only private interests are involved.”

In answer to the contention that the Norris-LaGuardia act controlled, the court said, at 563:

“It suffices to say that the Norris-LaGuardia Act can affect the present decree only so far as its provisions are found not to conflict with those of § 2, Ninth, of the Railway Labor Act, authorizing the relief which has been granted. Such provisions cannot be rendered nugatory by the earlier and more general provisions of the Norris-LaGuardia Act.”

Insofar as the Railway Labor Act, as we now interpret it, authorizes the issuance of injunctions to prevent strikes over minor disputes, it operates to repeal the provisions of the Norris-LaGuardia act, to the extent that the wording thereof might otherwise be said to apply to such railway labor disputes. It follows that, in the case at bar, the district court has jurisdiction to entertain plaintiffs' prayer for injunctive relief.

3. The correctness of the conclusions which we have reached in this case is supported by the legislative history of the Railway Labor Act.*

For the reasons herein set forth, the order from which [fol. 52] an appeal has been taken is reversed and the cause is remanded to the district court with instructions to take further proceedings not inconsistent with the views herein expressed.

* See: statement of Mr. Harrison, *ante* page 5; *Elgin, J. & E. R. Co. v. Burley*, 325 U. S. 711, at 721-729; hearings before the Senate Committee on Interstate Commerce, 73d Cong., 2d Sess. (1934) on S. 3266; hearings before the House Committee on Interstate and Foreign Commerce, 73d Cong., 2d Sess. (1934) on H. R. 7650; Senate Report No. 1065, (73d Cong., 2d Sess.); House Report No. 1944 (73d Cong., 2d Sess.) and 78 Cong. Rec. 11710-11720, 12083, 12375.

[fol. 53] UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT, CHICAGO 10, ILLINOIS

No. 11474

THE CHICAGO RIVER AND INDIANA RAILROAD COMPANY, *et al.*,
Plaintiffs-Appellants,

VS.

BROTHERHOOD OF RAILROAD TRAINMEN, *et al.*,
Defendants-Appellees.

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.

JUDGMENT—February 6, 1956

This cause came on to be heard on the transcript of the record from the United States District Court for the Northern District of Illinois, Eastern Division; and was argued by counsel.

On consideration whereof, it is ordered and adjudged by this court that the order of the said District Court in this cause appealed from be, and the same is hereby, reversed, with costs, and that this cause be, and it is hereby, remanded to the said District Court with instructions to take further proceedings not inconsistent with the views expressed in the opinion of this Court filed this day.

[fol. 54] UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT, CHICAGO 10, ILLINOIS

ORDER DENYING PETITION FOR REHEARING—March 5, 1956

It is ordered by the Court that the petition for a rehearing of this cause be, and the same is hereby, denied.

[fol. 55] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 56] IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION

No. 54 C 1024

THE CHICAGO RIVER AND INDIANA RAILROAD COMPANY,
a Corporation, Plaintiff,

vs.

BROTHERHOOD OF RAILROAD TRAINMEN, A Voluntary Association, BROTHERHOOD OF RAILROAD TRAINMEN LODGE NO. 964, FELIX E. KAZMER, General Chairman, LODGE NO. 964, MICHAEL V. SMALLEY, Secretary, LODGE NO. 964, GEORGE C. HOFER, Committeeman, LODGE NO. 964, W. M. DOLAN, Vice President, Brotherhood of Railroad Trainmen, Defendants.

MANDATE OF U. S. C. A.—7TH CIRCUIT

Be it Remembered, that on to wit, the 16th day of July, 1954, the above-entitled action was commenced by the filing of the Complaint in the office of the Clerk of the United States District Court for the Northern District of Illinois, Eastern Division:

And afterwards on, to wit, the 13th day of March, 1956 there was filed in the Clerk's office of said Court a certain Mandate Of The United States Court Of Appeals, Seventh Circuit, in words and figures following, to wit:

THE PRESIDENT OF THE UNITED STATES OF AMERICA

To: The Honorable the Judges of the United States District Court for the Northern District of Illinois, Eastern Division.

Greeting:

Whereas, lately in the United States District Court for the Northern District of Illinois, Eastern Division before you, or some of you, in a cause between The Chicago River and Indiana Railroad Company, et al., Plaintiffs and Brotherhood of Railroad Trainmen, et al., Defendants, [fol. 57] No. 54-C-1024, an Order was entered on the Twenty-First Day of March, 1954.

as by the inspection of the transcript of the record of the said District Court, which was brought into the United States Court of Appeals for the Seventh Circuit by virtue of The Chicago River and Indiana Railroad Company, et al., agreeably to the act of Congress, in such case made and provided, fully and at large appears.

And Whereas, in the term of October, in the year of our Lord one thousand nine hundred and fifty-five, the said cause came on to be heard before the said United States Court of Appeals for the Seventh Circuit, on the said transcript of record, and was argued by counsel.

On Consideration Whereof, it is ordered and adjudged by this court that the order of the said District Court in this cause appealed from be, and the same is hereby, Reversed, with costs, and that this cause be, and it is hereby, Remanded to the said District Court with instructions to take further proceedings not inconsistent with the views expressed in the opinion of this Court filed this day.

Monday, February 6, 1956.

And afterwards, to-wit, on the twenty-first day of February, 1956, there was filed in the Office of the Clerk of this Court a petition for rehearing, which said petition for rehearing was denied on the fifth day of March, 1956.

And further that Appellants, The Chicago River and Indiana Railroad Company et al., recover against the Appellees, Brotherhood of Railroad Trainmen et al., the sum of one hundred, nin-ty-five & 56/100 Dollars (\$195.56) for their cost herein, expended with direction to award execution thereof.

You, therefore, are hereby commanded that such further proceedings be had in said cause, as according to right and justice, and the laws of the United States, ought to be had, the said Judgment notwithstanding.

Witness, the Honorable Earl Warren, Chief Justice of the United States, the twelfth day of March, in the year of our Lord one thousand nine hundred and fifty-six.

Kenneth J. Carrick, Clerk of the United States Court of Appeals for the Seventh Circuit.

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[fol. 58] IN THE DISTRICT COURT OF THE UNITED STATES

MOTION FOR PERMANENT INJUNCTION—Filed March 15, 1956

Now come the plaintiffs and move this Court to enter a permanent injunction against the defendants for the reasons stated in plaintiffs' verified amended complaint, plaintiffs' motion for preliminary injunction with affidavits attached, and the attached affidavit.

Marvin A. Jersild, Wayne M. Hoffman, Kenneth F. Burgess, Douglas F. Smith, Walter J. Cummings, Jr., William K. Bachelder, Attorneys for Plaintiffs.

[fol. 59] IN THE DISTRICT COURT OF THE UNITED STATES

DEFENDANTS' ELECTION TO ABANDON THEIR ANSWER AND TO STAND ONLY UPON CERTAIN DEFENSES, ETC.—Filed March 15, 1956

Defendants, by their Counsel of Record, elect to abandon their Answer in this cause and to stand only upon the two following defenses of law:

1. The defense that the National Railway Labor Act does not prohibit strikes and particularly that it does not prohibit strikes over such minor grievances as are involved in this case.

[fol. 60] 2. The defense that even if the National Railway Labor Act does prohibit strikes over grievances, it does not repeal, modify, impair or otherwise affect the Norris-LaGuardia Act and does not authorize injunction as a preventive of or sanction for threatened or actual strikes such as those involved in this case.

Henslee, Monek & Murray, 139 N. Clark Street, Suite 810, Chicago 2, Illinois—STate 2-5925, Attorneys

for Brotherhood of Railroad Trainmen and other defendants.

IN THE DISTRICT COURT OF THE UNITED STATES

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND INJUNCTION—
March 15, 1956

This cause coming on to be heard, and the Court having considered the verified Amended Complaint heretofore filed in this case, the defendants' answer and motion to dismiss, and the plaintiffs' motions with affidavits attached, does find the facts and conclusions as to the law as follows:

FINDINGS OF FACT

1. Plaintiffs are corporations organized and existing under and by virtue of the laws of various of the States of the United States. Plaintiffs are common carriers by railroad and are subject to the Railway Labor Act, 45 U. S. C. § 151 et seq. Plaintiff, The Chicago River and Indiana Railroad Company (hereinafter called the "River Road") is a corporation organized and existing under and by virtue of the laws of the State of Illinois and is a common carrier by rail and operates a line of railroad serving the [fol. 61] Union stockyards, Chicago, Illinois, and serves at Chicago, Illinois the lines of railroad of the other plaintiffs.

2. The defendant Brotherhood of Railroad Trainmen is a voluntary organization and is a labor organization within the meaning of the Railway Labor Act, which is, and at all times material hereto has been the recognized and acting collective bargaining agent for all of the River Road's employees who are classified as yard foremen and yard helpers (including switch tenders). The Brotherhood of Railroad Trainmen consists of a Grand Lodge and many subordinate Local Lodges, and has its principal business office in Cleveland, Ohio.

3. The defendant Brotherhood of Railroad Trainmen,

Lodge No. 964, is a local lodge of the Brotherhood of Railroad Trainmen with headquarters at Chicago, Illinois.

4. Defendants Felix E. Kazmer, Michael V. Smalley, and George C. Hofer are officers of Lodge No. 964, and defendant W. M. Dolan is vice president of the Brotherhood of Railroad Trainmen. They fairly and adequately represent their organizations and the members thereof.

5. In the conduct of its business the River Road employs a class of employees, among others, generally referred to as yard foremen and yard helpers (including switch tenders) whose duties, generally stated, are the handling and controlling of the movement of railroad cars and trains over the rails of plaintiff. Plaintiff cannot operate its railroad without the performance of these duties. These employees are all members of or represented by the Brotherhood of Railroad Trainmen and Lodge No. 964, and the River Road has recognized the Brotherhood of Railroad Trainmen as the collective bargaining agent for these said employees.

6. For many years prior to the claims and grievances hereinafter referred to and continuing up to the present time, rules and working conditions pertaining to the classes of employees known as yard foremen and yard helpers (including switch tenders) were determined by contracts between plaintiff and the Brotherhood of Railroad Trainmen entered into from time to time.

7. The River Road and the defendants have at all material times in question, and for many years prior thereto handled claims and grievances concerning individual employees of the classes mentioned in accordance with the [fol. 62] various agreements and in accordance with the provisions of the Railway Labor Act. Among the claims and grievances presented to this plaintiff for disposition were nineteen claims for additional compensation, one claim for reinstatement of a discharged employee, and one claim for reinstatement of an employee to the position of yard foreman. These grievances, disputes and claims were handled on the property of this plaintiff in accordance with the various agreements between plaintiff and defendants, and in accordance with the provisions of the Railway Labor Act. All twenty-one claims above referred to were sub-

mitted to the superintendent of the River Road, an officer designated to handle such cases, who considered and ultimately denied each of the twenty-one claims. Each of the said twenty-one claims was appealed to the General Manager of the River Road, who was designated as the highest officer to handle such claims under the Railway Labor Act. The said twenty-one claims were heard and considered at various times and were denied by the said officer on various dates between December 20, 1949 and September 4, 1953.

8. Defendants heretofore called a strike for six A. M. Monday, June 7, 1954, in order to coerce the River Road into meeting the demands contained in the said twenty-one grievances and claims. The said strike was postponed when the National Mediation Board proffered its services. The efforts of the National Mediation Board to mediate these disputes failed, whereupon the National Mediation Board withdrew on July 15, 1954. In the meantime the River Road submitted, pursuant to the terms of the Railway Labor Act, each of the said claims to the First Division of the National Railroad Adjustment Board, which has not yet rendered a decision on any of them.

9. The defendants, and each of them, have threatened an immediate strike of all employees of the classes of yard foremen and yard helpers (including switch tenders).

10. The said strike threat, if carried into effect, would paralyze the River Road's operation and prevent the transportation of persons and property over it. The purpose of said strike is to force this plaintiff, by the use of self-help by defendants and the employees represented by them, to settle grievances or claims for compensation without submitting such disputes or grievances to the National Railroad Adjustment Board.

[fol. 63] 11. Uninterrupted services of the River Road's yard foremen and yard helpers are essential to the operation of its railroad. A stoppage of operations would cause this plaintiff thousands of dollars damages daily and would require it to lay off approximately 1100 employees who would lose an aggregate amount of money in excess of Twelve Thousand Dollars (\$12,000) wages daily for each day of such strike or stoppage. This plaintiff will be compelled to embargo shipments, including perishable food-

stuffs, into and out of the stock yards in Chicago, which will immediately cause irreparable damage to the 600 industries and 27 railroads served by it. These 27 railroads, which are the other plaintiffs herein, will incur thousands of dollars of damages for each day the strike is in effect. The adverse effects upon business and the public generally will cause hundreds of thousands of dollars damage each day the strike is in effect.

12. The River Road has attempted to settle with defendants the 21 grievances and claims which underlie the threatened strike or work stoppage through negotiation and through the mediation efforts of the National Mediation Board. Defendants refused to submit the grievances to the National Railroad Adjustment Board and refused to join with the carrier in its submission.

13. The amount in controversy exceeds the sum of Three Thousand Dollars (\$3,000), exclusive of interest and costs.

CONCLUSIONS OF LAW

Under the foregoing findings of fact, the Court concludes that:

1. The cause of action here asserted by plaintiffs is one arising under the laws of the United States regulating commerce; and the Court has jurisdiction of the parties and subject matter of said cause under 28 U. S. C. 1331 and 1337.

2. The Complaint herewith states a claim upon which relief should be granted.

3. Plaintiffs, defendants and plaintiffs' employees represented by defendants are subject to the Railway Labor Act, the general purposes of which are, among other things, to avoid any interruption to commerce or to the operation of any carrier engaged therein, and to provide [fol. 64] for the prompt and ordinary settlement of all disputes growing out of grievances or out of the interpretation or application of agreements covering rates of pay, rules or working conditions.

Congress has established compulsory administrative machinery under the Railway Labor Act whereby parties to a collective bargaining agreement are required to submit such controversies as are here involved to the National

Railroad Adjustment Board or to a proper court or board without resorting to self-help.

4. It is the public policy of the United States stated in Section 2, First, of the Railway Labor Act, that it shall be the duty of all carriers, their officers, agents and employees, to exert every reasonable effort to make and maintain agreements concerning rates of pay, rules and working conditions, and to settle all disputes whether arising out of the application of such agreements or otherwise, in order to avoid any interruption to commerce or to the operation of any carrier growing out of any dispute between the carrier and the employees thereof. An interruption of commerce or an interruption of the operations of the plaintiffs by strike or stoppage, called, led or participated in by defendants pending final and ultimate decision by the National Railroad Adjustment Board would constitute a violation of said public policy. The purpose of the strike threatened by defendants is to force the River Road, by the use of self-help by defendants and the employees represented by them, to settle grievances or claims for compensation without submitting such grievances or claims to the National Railroad Adjustment Board, all of which is contrary to law.

5. Defendants and each of them by their threatened actions are in violation of the Railway Labor Act. The defendants and each of them have failed to exhaust remedies available to them under the Railway Labor Act for the handling and final disposition of the above claims.

6. This cause does not involve a labor dispute within the meaning of the Norris-La Guardia Act (29 U. S. C. 101 et seq.) and this Court has not been deprived of jurisdiction to grant the relief requested herein.

7. Even if this cause did involve a labor dispute within the meaning of the Norris-La Guardia Act, this Court has jurisdiction to enjoin the threatened acts for the purpose [fol. 65] of enforcing the mandatory provisions of the Railway Labor Act.

8. Plaintiffs have no adequate remedies at law and will suffer irreparable harm and injury unless awarded injunctive relief. The equity powers of this Court are adequate to afford the relief sought herein and should be exercised in these circumstances.

9. A permanent injunction should be issued enjoining defendants, their agents, servants, and all acting by, through, or for them, or on their behalf, from conducting any strike, stoppage, or other active economic coercion to force or coerce the River Road into settling the claims, grievances and disputes herein referred to which have been filed with the National Railroad Adjustment Board.

Enter:

Win G. Knoch, United States District Judge

March 15, 1956.

PERMANENT INJUNCTION

This matter coming on to be heard, and the Court having considered the verified Amended Complaint heretofore filed in this case, the defendants' answer and motion to dismiss, plaintiffs' motions with affidavits attached, and the arguments of counsel and the entire record herein, and the Court having made findings of fact and conclusions of law,

Now, Therefore, It Is Hereby Ordered, Adjudged and Decreed that defendants, members of defendants' organization and its officers, their agents, servants, employees and attorneys, and all persons including all yardmen, yard foremen and switchmen employed by the Chicago River and Indiana Railroad Company on its railroad, and any persons in active concert and participation with them, and all persons acting by, with, through and under them, or by or through their order, be and they are hereby enjoined from, in connection with the grievances now pending in the National Railroad Adjustment Board:

1. Calling, ordering, authorizing, encouraging, inducing, approving, continuing, starting or permitting any strike or [Vol. 66] collective work stoppage on that plaintiff's railroad.

2. Picketing or bannering any of the premises on which that plaintiff conducts its railroad operations.

3. Interfering with ingress to or egress from said premises.

4. Interfering in any manner with the delivery, loading, unloading, dispatch or movement of any of that plaintiff's rolling stock, engines, cars, equipment or trains or any of the contents thereof.

5. In any manner interfering with or inducing or endeavoring to induce any person employed by that plaintiff from performing his work and duties and from in any manner endeavoring to induce any such employee to desist therefrom.

Nothing herein shall be construed to require an individual employee to render labor or service without his consent, nor shall anything herein be construed to make the quitting of his labor by an individual employee an illegal act.

Enter:

Win G. Knoch, United States District Judge

March 15, 1956.

IN THE DISTRICT COURT OF THE UNITED STATES

DESIGNATION OF PARTS OF RECORD TO BE INCLUDED IN TRANSCRIPT FOR TRANSMITTAL TO THE SUPREME COURT OF THE UNITED STATES FOR PETITION FOR CERTIORARI—Filed March 26, 1956.

The Clerk of the Court is requested and directed to prepare a transcript of record in the above-entitled cause for transmittal to the Supreme Court of the United States and to include therein only the following:

- [fol. 67] 1. Mandate of the United States Court of Appeals for the Seventh Circuit.
2. Motion for Permanent Injunction.
3. Defendants' Election to Abandon Their Answer and to Stand Only Upon Certain Defenses, etc.
4. District Court's Findings of Fact, Conclusions of Law and Final Judgment and Injunction entered March 15, 1956.
5. Clerk's Certificate.

Note: Defendants intend to consolidate this Record with a transcript of the record of the United States Court of Appeals for the Seventh Circuit in this cause, which transcript will incorporate the full substance of the remainder of the record in this cause.

Henslee, Moniek & Murray, 139 North Clark Street, Suite 810, Chicago 2, Illinois, STate 2-5925, Attorneys for the Brotherhood of Railroad and other defendants.

IN THE DISTRICT COURT OF THE UNITED STATES

NOTICE OF APPEAL—Filed April 9, 1956

Notice is hereby given that all of the defendants in this cause hereby appeal to the United States Court of Appeals for the 7th Circuit from the final Judgment and Order of Injunction rendered in this cause on March 15, A. D. 1956, the Honorable Win G. Knoch, Judge presiding.

Edward B. Henslee, Martin K. Henslee, William C. Wines, John J. Naughton, 139 North Clark Street, Chicago, Ill., STate 2-5925, Attorneys for Defendants.

[fol. 68] STATE OF ILLINOIS,
County of Cook, ss.

John J. Naughton, being first duly sworn, deposes and says that he has caused a true copy of the above Notice of Appeal to be served upon all of the plaintiffs by mailing such copy in an envelope bearing sufficient postage and addressed to their attorneys of record as follows:

Walter J. Cummings, Jr., Sidley, Austin, Burgess & Smith, 11 S. La Salle Street, 20th Floor, Chicago, Illinois.

John J. Naughton

Subscribed and sworn to before me this 9th day of April, A. D. 1956.

Dorothy Steinmetz, Notary Public. (Seal)

UNITED STATES OF AMERICA,
Northern District of Illinois, ss.

No. 54 C 1024

The Chicago River and Indiana Railroad Company, et al.,
Plaintiffs,

vs.
Brotherhood of Railroad Trainmen, et al.

CLERK'S CERTIFICATE OF MAILING

I, Roy H. Johnson, Clerk of the United States District Court for the Northern District of Illinois, do hereby certify that on the 9th day of April, 1956, in accordance with Rule 73(b) of the Federal Rules of Civil Procedure, a copy of the foregoing Notice of Appeal was mailed to:

Walter J. Cummings, Jr.,
Sidley, Austin, Burgess and Smith,
11 South La Salle Street, 20th Floor,
Chicago 3, Illinois.

In Testimony Whereof, I have hereunto subscribed my name and affixed the seal of the aforesaid Court at Chicago, Illinois, this 9th day of April, 1956.

Roy H. Johnson, Clerk. By Gizella Butcher, Deputy Clerk. (Seal)

[fol. 69] IN THE DISTRICT COURT OF THE UNITED STATES

STATEMENT OF POINTS ON APPEAL—Filed April 9, 1956

The defendants will rely upon appeal on the following contentions:

1. The Court erred in holding that the National Railway Labor Act was intended to prohibit the threatened strike involved in this case.

2. The Court erred in failing to hold that even if the National Railway Labor Act was intended to prohibit the threatened strike involved in this case, it so far repealed the Norris-La Guardia Act as to force this Court to grant an injunction.

3. The Court erred in entering a judgment for the plaintiffs, in granting a permanent injunction and in not dismissing this case upon the merits with prejudice and at defendants' cost.

Edward B. Henslee, Martin K. Henslee, William C. Wines, John J. Naughton, 139 North Clark Street, Chicago, Ill., State 2-5925, Attorneys for Defendants.

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[fol. 70] IN THE DISTRICT COURT OF THE UNITED STATES

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DEFENDANTS' ADDITIONAL DESIGNATION OF DOCUMENTS TO BE INCLUDED IN THE RECORD

The defendants request and direct the Clerk of this Court to include in the record heretofore requested by the defendants the following additional items:

1. The prior designation of record.
2. The permanent Injunction.
3. Defendants' Notice of Appeal, with the affidavit of counsel attached thereto.
4. Clerk's Certificate of Mailing Notice of Appeal.
5. This additional designation of parts of the record.
6. Statement of points on which the defendants will rely on appeal.

Edward B. Henslee, Martin K. Henslee, William C. Wines, John J. Naughton, 139 North Clark Street, Chicago, Ill., State 2-5925, Attorneys for Defendants.

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[fol. 71] IN THE DISTRICT COURT OF THE UNITED STATES

STIPULATION AS TO RECORD ON APPEAL—Filed April 26, 1956

It is hereby stipulated and agreed by and between the parties, by their Counsel of Record, pursuant to Rule 75(f) of the Federal Rules of Civil Procedure, that the papers heretofore designated in defendants' Designations of Record filed respectively on March 26, 1956 and on [fol. 72] April 9, 1956, in the office of the Clerk of this Court, and the record already on file in the United States Court of Appeals for the Seventh Circuit in Cause No. 11474, entitled The Chicago River and Indiana Railroad Company, et al. vs. Brotherhood of Railroad Trainmen, et al. may constitute the record on appeal in this case.

It is Further Stipulated that the plaintiff waives its right to designate any further matters for inclusion in the Transcript of Record on defendants' appeal in this case and the Clerk may forthwith prepare and transmit the same.

Edward B. Henslee, Martin K. Henslee, William C. Wines, John J. Naughton, Attorneys for Plaintiff.
Marvin A. Jersild, Wayne M. Hoffman, Walter J. Cummings, Jr., William K. Bachelder, Attorneys for Defendants.

CLERK'S CERTIFICATE

UNITED STATES OF AMERICA,
Northern District of Illinois, ss.

I, Roy H. Johnson, Clerk of the United States District Court for the Northern District of Illinois, do hereby certify the above and foregoing to be a true and complete transcript of the proceedings had of record made in accordance with the Designations of Contents of Record on Appeal, and the Stipulation As To Record on Appeal, filed in this Court in the cause entitled: The Chicago River And Indiana Railroad Company, a corporation, Plaintiff vs. Brotherhood of Railroad Trainmen, a Voluntary Association, et al., Defendants, No. 54 C 1024, as the same appear

from the original records and files thereof now remaining among the records of the said Court in my office.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed the seal of the aforesaid Court at Chicago, Illinois, this 27th day of April, 1956.

Roy H. Johnson, Clerk, By Gizella Butcher, Deputy Clerk. (Seal)

[fol. 73] UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

No. 11745

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.

BROTHERHOOD OF RAILROAD TRAINMEN, et al., Defendants-Appellants,

vs.

THE CHICAGO RIVER AND INDIANA RAILROAD COMPANY, et al., Plaintiffs-Appellees

JUDGMENT—May 17, 1956

Upon the motion of defendants-appellants that this cause be docketed upon the transcript of record heretofore filed and printed in the above-mentioned cause No. 11474 and upon the additional transcript of record filed in this cause No. 11745, and that it may be considered and decided upon briefs, oral arguments, petition for rehearing and answer to petition for rehearing filed in cause No. 11474, which motion is supported by stipulation signed by both defendants-appellants and plaintiffs-appellees, and it appearing that, following our reversal in cause No. 11474 of the district court's order dismissing the above entitled suit and for remandment, said district court proceeded upon re-

mandment and rendered findings of fact, conclusions of law, and a judgment for injunction in accordance with the views expressed in this court's opinion in No. 11474, and that defendants-appellants have saved but two of the questions originally raised by the proceedings below, waiving all other questions of fact or law, to wit:

"(1) Was it the Congressional intent of the National Railway Labor Act to prohibit the threatened strike involved in this case which concededly, if accomplished, would have involved only demands with respect to minor grievances?"

[fol. 74] (2) If the National Railway Labor Act was intended to prohibit the above-mentioned threatened strike, did it so far repeal the Norris-LaGuardia Act as to authorize or compel the District Court to grant an injunction?"

And it further appearing that all of the parties hereto represent to this court that they have no arguments to present other than those presented in No. 11474, but that defendants-appellants ask this court to reconsider and rescind its former holding, and the court being fully advised on the premises, It Is Ordered, Adjudged and Decreed that this court refuses to reconsider and rescind its former holding in No. 11474, and hereby adheres to said holding. The court finds that the district court, upon remandment, proceeded in accordance with the order of remandment, and that no error occurred in the proceedings below upon remandment.

Accordingly, it is ordered, adjudged and decreed that the judgment of the district court, of March 15, 1956, from which this appeal was taken, be and the same is hereby, affirmed.

It is further ordered that pursuant to the stipulation of the parties hereto, there shall be filed in this appeal No. 11745, in addition to transcript of record now on file therein, the transcript of record heretofore filed in case No. 11474.

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[fol. 75] SUPREME COURT OF THE UNITED STATES, OCTOBER
TERM, 1956

No. 313

BROTHERHOOD OF RAILROAD TRAINMEN, etc., et al.,
Petitioners,

vs.

CHICAGO RIVER AND INDIANA RAILROAD COMPANY, et al.

ORDER ALLOWING CERTIORARI—Filed October 15, 1956

The petition herein for a writ of certiorari to the United States Court of Appeals for the Seventh Circuit is granted, and the case is transferred to the summary calendar and is assigned for argument immediately following No. 84.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

(2705-2)

LIBRARY
SUPREME COURT, U.S.

Supreme Court, U.S.

FILED

AUG 13 1956

JOHN T. FEY, Clerk

IN THE
Supreme Court of the United States

OCTOBER TERM, A. D. 1956.

No. 313

BROTHERHOOD OF RAILROAD TRAINMEN,
etc., et al.,

Petitioners,

vs.

**CHICAGO RIVER AND INDIANA RAILROAD
COMPANY, et al.,**

Respondents.

**PETITION FOR CERTIORARI TO THE UNITED
STATES COURT OF APPEALS FOR THE SEVENTH
CIRCUIT.**

**EDWARD B. HENSLEE, SR.,
MARTIN K. HENSLEE,
WILLIAM C. WINES,
JOHN J. NAUGHTON,**

139 N. Clark St.,
Suite 810; Chicago (2), Ill.,

Attorneys for Petitioners.

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IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1956.

No.

BROTHERHOOD OF RAILROAD TRAINMEN,
etc., et al.,

Petitioners,

vs.

CHICAGO RIVER AND INDIANA RAILROAD
COMPANY, et al.,

Respondents.

PETITION FOR CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

Petitioners, Brotherhood of Railroad Trainmen, a national railway labor union, and five other petitioners named and identified in the margin,¹ seek this Court's writ of *certiorari* to review the final decision and judgment of the United States Court of Appeals for the Seventh Circuit holding

¹ Brotherhood of Railroad Trainmen Lodge No. 964; Felix E. Kazmer, general chairman, Lodge No. 964; Michael V. Smalley, secretary, Lodge No. 964; George C. Hofer, committeeman, Lodge No. 964; and W. M. Dolan, vice president, Brotherhood of Railroad Trainmen.

that respondents, the Chicago River and Indiana Railroad Company and 27 other railroads named in the margin² were entitled to a permanent injunction restraining a threatened strike arising out of petitioners' and respondents' failure to reach an agreement settling 21 past minor grievances and claims asserted by individual members of the Brotherhood.

The Court of Appeals for the Seventh Circuit held, rejecting petitioners' contentions to the contrary, *first*, that the National Railway Labor Act (45 U. S. C. A. Secs. 1, 44 Stat. 577, 48 Stat. 926, 48 Stat. 1185, 54 Stat. 785, 62 Stat. 991, 63 Stat. 107) interdicts strikes over "minor" as distinguished from strikes over "major" grievances as those terms are used in railway labor parlance and, *second*, that, in the language of the Court, the National Railway Labor Act

"operates to repeal the provisions of the Norris-LaGuardia Act [Tille 29, U.S.C.A., §101, Sec. 1, 47 Stats. 70], to the extent that the wording thereof might otherwise be said to apply to such railway labor disputes".

This holding of the Court of Appeals for the Seventh Circuit in the instant case was pronounced on February 6, 1956, on an appeal from a decision and judgment of the Dis-

² The Atchison, Topeka and Santa Fe Railway Company; the Baltimore and Ohio Railroad Company; The Baltimore and Ohio Chicago Terminal Railroad Company; The Belt Railway Company of Chicago; The Chesapeake and Ohio Railway Company (C & O District); The Chesapeake and Ohio Railway Company (Pere Marquette District); Chicago & Eastern Illinois Railroad Company; Chicago and North Western Railway Company; Chicago, Burlington & Quincy Railroad Company; Chicago Great Western Railway Company; Chicago, Indianapolis and Louisville Railway Company; Chicago Junction Railway Company; Chicago, Milwaukee, St. Paul and Pacific Railroad Company; Chicago, Rock Island & Pacific Railroad Company; Elgin, Joliet and Eastern Railway Company; Erie Railroad Company; Grand Trunk Western Railroad Company; Gulf, Mobile and Ohio Railroad Company; Illinois Central Railroad Company; Illinois Northern Railway Company; Indiana Harbor Belt Railroad Company; The Minneapolis, St. Paul & St. Cte. Marie Railroad Company; The New York Central Railroad Company; The Pennsylvania Railroad Company; and Wabash Railroad Company Corporations.

trict Court for the Northern District of Illinois to the contrary (cause No. 11474, R. 30-31) and was adhered to on appeal from a final decree of the district court rendered in favor of respondents on remandment (Cause No. 11745, R. 15-16).

On February 10, 1956, five days after the announcement by the Court of Appeals for the Seventh Circuit of its view, the Court of Appeals for the Fifth Circuit held in *Brotherhood of Railroad Trainmen v. Central of Georgia Ry. Co.*, 299 F. 2d 901, opinion and dissent reprinted in full, Appendix II, *post* (Brown, J. dissenting) that the Railway Labor Act does not repeal, limit or otherwise abridge the withdrawal by the Norris-LaGuardia Act of Federal jurisdiction to enjoin strikes in the area of railway labor, the Court declaring (229 F.2d 901, at 909):

"If, as appellee contends, Congress had, shortly after the passage of the Norris-LaGuardia Act, intended to curtail its provisions, limiting the equity jurisdiction of the courts in labor disputes so as to subject strike action to injunction, it is inconceivable, we think, that it would not have expressly so provided."

The Central of Georgia has sought this Court's writ of *certiorari*. (*Central of Georgia Ry. Co. v. Brotherhood of Railroad Trainmen*, October Term, 1955, No. 935.). That petition is still pending.

Reference to the Official and Unofficial Reports of the Opinions Delivered in the Courts Below.

The first opinion of the Court of Appeals in the instant case, rendered on respondents' appeal from a judgment dismissing their action on the merits but continuing in force pending appeal a temporary injunction theretofore rendered, is reported in 229 F. 2d at pages 926 to 933, and

is reprinted in full as Appendix I to this petition, at pp. 37 to 45, *post*.

The Court's final memorandum opinion and judgment, in which the Court of Appeals adheres to its views on the substantive merits of the case, is not yet officially reported. It is reprinted in full as Appendix II, pp. 46 to 61, *post*.

The District Court rendered no opinions in this case. That court's original findings, conclusions and judgment are reprinted as Appendix III to the petition, pp. 61 to 67, *post*.

That court's final findings, conclusions and judgment, rendered in obedience to the opinion and mandate of the Court of Appeals on the first appeal, are reprinted as Appendix IV, at pp. 67 to 68, *post*.

STATEMENT OF THE GROUNDS ON WHICH THE JURISDICTION OF THIS COURT IS INVOKED.

The final judgment of which review is sought was entered on May 17, 1956. No petition for rehearing was filed.

In its final memorandum opinion, the Court of Appeals referred and adhered to the views expressed in its non-final opinion, reversing and remanding the District Court's first judgment.

The first opinion and judgment of the Court of Appeals in this case were rendered on February 6, 1956. Rehearing was denied on March 5, 1956. It will be noted that since the first judgment was one of remandment for further proceedings, it was not final. Although this Court would of course have had technical jurisdiction to review it, the issues were not then ripe for adjudication.

This Court's jurisdiction is invoked under Section 1254 of the Federal Judicial Code (U. S. C. A., Title 28, Sec. 1254, 62 Stat. 928).

THE QUESTIONS PRESENTED FOR REVIEW.

The questions presented for review are:

1. DOES THE LABOR RAILWAY ACT PROHIBIT THE STRIKE ADMITTEDLY THREATENED BY PETITIONERS, WHICH STRIKE, HAD IT NOT BEEN PREVENTED BY THE INJUNCTIVE ORDERS IN THIS CASE, WOULD HAVE ARISEN OUT OF CONCEDEDLY "MINOR GRIEVANCES" OF 21 MEMBERS OF PETITIONERS' BROTHERHOOD OF RAILROAD TRAINMEN?

2. IF THE ANSWER TO QUESTION NO. 1 ABOVE STATED IS "YES", DOES THE RAILWAY LABOR ACT SO FAR REPEAL THE PROVISIONS OF THE NORRIS-LAGUARDIA ACT AS TO RE-INVEST FEDERAL COURTS WITH JURISDICTION TO ENJOIN THE THREATENED STRIKE, AS RESPONDENTS CONTEND AND AS THE COURT OF APPEALS HAS HELD, OR DOES IT, AS PETITIONERS CONTEND, LEAVE RESPONDENTS TO SUCH OTHER REMEDIES AS MAY EXIST?

FEDERAL STATUTES WHICH THIS CASE INVOLVES.

This case involves the effect, if any, of the Railway Labor Act upon the Norris-LaGuardia Act with respect to strikes or threats of strikes over past minor grievances and claims.

The pertinent provisions of the Railway Labor Act and the Norris-LaGuardia Act are as follows:

(1) *Railway Labor Act*

Section 1a of the Railway Labor Act (Title 45 U.S.C.A., Section 151a, § 2, 44 Stats. 577; § 2, 48 Stats. 1186) provides: "The general purposes of the chapter are: (1) To avoid any interruption to commerce or to the opera-

tion of any carrier engaged therein; * * * (4) to provide for the prompt and orderly settlement of all disputes concerning rates of pay, rules, or working conditions; (5) to provide for the prompt and orderly settlement of all disputes growing out of grievances or out of the interpretation or application of agreements covering rates of pay, rules or working conditions."

Section 2 First of the Railway Labor Act (Title 45 U. S. C. A., Sec. 152 First) provides: "It shall be the duty of all carriers, their officers, agents and employees to exert every reasonable effort to make and maintain agreements concerning rates of pay, rules and working conditions, and to settle all disputes, whether arising out of the application of such agreements or otherwise, in order to avoid any interruption to commerce or to the operation of any carrier growing out of any dispute between the carrier and the employees thereof."

Section 2, Second, of the Railway Labor Act (Title 45 U. S. C. A., Sec. 152 Second, § 2, 44 Stats. 577, § 2, 48 Stats. 1186, § 1, 62 Stats. 909, 64 Stats. 1238), provides: "All disputes between a carrier or carriers, and its or their employees shall be considered, and, if possible, decided with all expedition, in conference between representatives designated and authorized so to confer, respectively, by the carrier or carriers and by the employees thereof interested in the dispute."

Section 3, First, (i) of the Railway Labor Act (Title 45 U. S. C. A., Sec. 153 First (i) § 2, 44 Stat. 577, § 2, 48 Stat. 1186, § 1, 62 Stat. 909, 64 Stat. 1238) provides: "The disputes between an employee or group of employees and a carrier or carriers growing out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules or working conditions, * * *, shall be handled

in the usual manner up to and including the chief operating officer of the carrier designated to handle such disputes; but, failing to reach an adjustment in this manner, the disputes may be referred by petition of the parties or by either party to the appropriate division of the Adjustment Board with a full statement of the facts and all supporting data bearing upon the disputes."

(2) *Norris-LaGuardia Act*

Section 1 "No court of the United States, as defined in Sections 101-115 of this Title, shall have jurisdiction to issue any restraining order or temporary or permanent injunction in a case involving or growing out of a labor dispute, except in a strict conformity with the provisions of such sections; nor shall any such restraining order or temporary or permanent injunction be issued contrary to the public policy in such sections." (Title 29, U. S. C. A. Section 101, Section 1, 47 Stat. 70)

Section 4 "No Court of the United States shall have jurisdiction to issue any restraining order or temporary or permanent injunction in any case involving or growing out of any labor dispute to prohibit any person or persons participating or interested in such dispute (as these terms are herein defined) from doing, whether singly or in concert, any of the following acts:

"(a) Ceasing or refusing to perform any work or to remain in any relation of employment." (29 U. S. C. Sec. 104, Sec. 4, 47 Stat. 70).

Section 13 "When used in Sections 101-115 of this Title, and for the purposes of such sections—(a) A case shall be held to involve or to grow out of a labor dispute when the case involves persons who are engaged in the same industry, trade, craft, or occupation; or have direct or indirect

interests therein; or who are employees of the same employer; or who are members of the same or an affiliated organization of employers or employees; whether such dispute is (1) between one or more employers or associations of employers and one or more employees or associations of employees; (2) between one or more employers or associations of employers and one or more employers or associations of employers; or (3) between one or more employees or associations of employees and one or more employees or associations of employees; or when the case involves any conflicting or competing interests in a 'labor dispute' (as defined in this section) of 'persons participating or interested' therein (as defined in this section)." (Title 29 U. S. C. Sec. 113 Sec. 13, 47 Stat. 73).

STATEMENT OF THE FACTS.

All quotations in the following Statement of the Facts are from the language of the first opinion of the Court of Appeals in this case, adhered to on the second opinion.

Respondents, "Chicago River and Indiana Railroad Company and 27 other railroads prayed for an injunction to restrain the Brotherhood of Railroad Trainmen from calling a threatened strike against the River Road."

Federal jurisdiction was asserted because the suit is claimed to arise under the laws of the United States and involves more than \$3000 exclusive of interest and costs. (28 U. S. C. A. 1331.)

The purpose of the threatened strike would be "to settle 21 grievances and claims through collective bargaining", that is, through consummation of the threatened strike and settlement thereof, "rather than by award of the National Railroad Adjustment Board."

The District Court "granted a restraining order which was later dissolved when the Court" (the District Court) "decided that the Norris-LaGuardia Act was applicable and, therefore, it lacked jurisdiction to grant the relief sought."

But that Court "subsequently granted an injunction" restraining the threatened strike "pending the determination of this appeal, which was taken from the judgment of dismissal."

The Court of Appeals thus correctly summarizes the substance of the alleged grievances of the River Road (p. 928):

"The grievances of the employees involved are 19 claims for additional compensation, 1 claim for reinstatement to a higher position, and 1 claim for reinstatement to the employ of the River Road. Each of these claims was presented to the railroad superintend-

ent who handles such cases. Each was appealed to the highest railroad officer designated to handle claims under § 3, First (i) of the Railway Labor Act, 45 U. S. C. A. § 153, First (i), and was denied by him."

Respondents' complaint alleges and petitioners do not now gainsay that "this strike would halt the operations of all trains into and out of the Chicago Stockyards, force the River Road to lay off 1,100 employees, who would lose in excess of \$12,000 a day in wages, cost the company thousands of dollars a day, and require the embargo of all shipments into and out of the Stockyards, causing irreparable damage to the 27 railroads (the other plaintiffs) and the 600 industries served" as well as entailing other damage.

In the light of these facts, initially controverted by petitioners below for want of information and belief as to the extent of damage but now conceded for all purposes in this case, petitioners have contended and still contend and respondents have controverted and still controvert the two following propositions of Federal statutory law:

1. THE INTENT OF THE RAILWAY LABOR ACT IS TO MINIMIZE BUT NOT TO PROHIBIT STRIKES IN THE AREA OF RAILWAY LABOR BY PROVIDING ATTRACTIVE BUT NOT COMPULSORY ADMINISTRATIVE PROCESSES AS ALTERNATIVE TO SUCH STRIKES. THIS IS TRUE AS TO STRIKES OVER PAST MINOR INDIVIDUAL GRIEVANCES AS WELL AS WITH RESPECT TO STRIKES FOR FUTURE BENEFITS.

2. EVEN IF THE NATIONAL RAILWAY LABOR ACT MUST BE CONSTRUED AS PROHIBITING STRIKES OVER MINOR GRIEVANCES, IT DOES NOT REPEAL, AMEND OR ABRIDGE THE NORRIS-LAGUARDIA ACT, WHICH WITHDRAWS FROM FEDERAL COURTS THE JURISDICTION TO ENJOIN STRIKES SUCH AS THE STRIKE THREATENED IN THIS CASE. ON THE CONTRARY, THE NATIONAL RAILWAY LABOR ACT, EVEN IF CONSTRUED AS INTERDICTING SUCH STRIKES, DOES NOT RE-INVEST DISTRICT COURTS WITH JURISDICTION TO ENJOIN SUCH STRIKES

BUT LEAVES THE CARRIERS AND THE GOVERNMENT TO SUCH REMEDIES, CIVIL OR CRIMINAL, AS MAY EXIST OTHERWISE THAN BY INJUNCTION.

As we have noted, the District Court initially sustained petitioners' contention that the Norris-LaGuardia Act was not repealed *pro tanto* by the National Railway Labor Act and therefore 'dismissed respondents' suit (Appendix III, *post*).

But, as noted in the first of the Court of Appeals, the District Court continued in effect a previously granted temporary injunction during the pendency of respondents' appeal.

The Court of Appeals reversed and remanded the cause for further proceedings.

As we have observed *ante*, this judgment of the Court of Appeals, which remanded this cause for further proceedings in the District Court, was not final and could have elicited *certiorari* only as an extraordinary judicial measure, the issues of fact as then delineated by the pleadings not having been adjudicated.

Upon this remandment petitioners filed an express disclaimer of all contentions of law or fact save the two contentions stated above, namely, that the National Railway Labor Act does not prohibit strikes of any kind, including strikes over minor grievances such as those involved in this case, and that even if it does prohibit such strikes, it does not so far repeal the Norris-LaGuardia Act as to authorize an injunction as alternative to other remedies or sanctions in the event of such a strike or threatened strike (R 11745, p. 9).

Of course the District Court entered a judgment of injunction in the light of the opinion and judgment of the Court of Appeals restraining the threatened strike. (*District Court's Findings*. Appendix III, p. 66.)

Petitioners appealed from this final judgment and on appeal reaffirmed their contentions. The Court of Appeals, adhering to its prior opinion and judgment, has affirmed the District Court's judgment of injunction (Appendix IV, p. 67.)

It is to review this affirmance that petitioners now seek this Court's writ of *certiorari*.

Jurisdiction of the District Court was invoked by respondents under the provisions of the National Railway Labor Act and was denied by petitioners under the provisions of the Norris-LaGuardia Act.

REASONS RELIED ON FOR ALLOWANCE OF THE WRIT.

I.

THE RATIONALE OF THE DECISION OF THE COURT OF APPEALS FOR THE SEVENTH CIRCUIT IN THE INSTANT CASE IS IN DIRECT AND IRRECONCILABLE CONFLICT WITH THE RATIONALE OF THE DECISION OF THE COURT OF APPEALS FOR THE FIFTH CIRCUIT IN BROTHERHOOD OF RAILROAD TRAINMEN VS. CENTRAL OF GEORGIA RAILWAY, 229 F. 2d 901, ON A VERY IMPORTANT QUESTION OF FEDERAL RAILWAY LAW THAT HAS NOT BEEN BUT SHOULD BE DECIDED BY THIS COURT.

The direct conflict of the holding of the Court of Appeals for the Seventh Circuit in this case with the holding of the Court of Appeals for the Fifth Circuit in *Central of Georgia* case (229 F. 2d 901) instantly emerges from the following two contrasting passages of the two opinions.

In the instant case, the Court of Appeals for the Seventh Circuits said (229 F. 2d at page 933):

“Insofar as the Railway Labor Act, as we now interpret it, authorized the issuance of injunctions to prevent strikes over minor disputes, it operates to *repeal* the provisions of the Norris-LaGuardia act, to the extent that the wording thereof might otherwise be said to apply to such railway labor disputes. It follows that, in the case at bar, the district court has jurisdiction to entertain plaintiffs’ prayer for injunctive relief.” (Emphasis supplied.)

But the Court of Appeals for the Fifth Circuit said in the *Central of Georgia* case (229 F. 2d at p. 905):

"If, as appellee contends, Congress had, shortly after the passage of the Norris-LaGuardia Act, intended to curtail its provisions, limiting the equity jurisdiction of the courts in labor disputes so as to subject strike action to injunction, it is inconceivable, we think, that it would not have expressly so provided. Indeed, in General Committee of Adjustment, 320 U. S. 323/64 S. Ct. 146, 88 L. Ed. 76, the Supreme Court expressly held that the Mediation Board's determination of such a controversy was not justiciable. In the light of that decision, appellee is under a burden too heavy to be borne when it seeks to justify the judicial remedy sought and obtained here by invoking a jurisdiction which the Norris-LaGuardia Act expressly withdraws from the Federal Courts."

Continuing, the Court of Appeals for the Fifth Circuit said in the *Central of Georgia* case at p. 905

"In short, all that is for decision on this appeal is whether the Railway Labor Act has expressly or impliedly *repealed* the provisions of the LaGuardia Act, denying jurisdiction to courts to enjoin strikes or work stoppages." Emphasis supplied.

Resolving in the negative the question stated in the language quoted above, the Court of Appeals for the Fifth Circuit reversed a decree of injunction granted by the District Court.

It thus appears that the Court of Appeals for the Seventh Circuit has held that the National Railway Labor Act does, whereas the Court of Appeals for the Fifth Circuit has declared that that Act does not, repeal, amend or abridge the Norris-LaGuardia Act so as to restore to Federal courts some measure of jurisdiction *via* injunction over disputes in the area of railway labor.

We are not unmindful of a difference in the facts, urged by counsel for the Brotherhood in resistance to *certiorari* in the *Central of Georgia* case and stressed by counsel for the railroads in resistance to rehearing in the instant case, which might be sufficient to distinguish the cases *if the difference in the facts had been recognized or relied on by either Court of Appeals in achieving its ultimate conclusion.*

That distinction, briefly stated, is that in the *Central of Georgia* case, the threatened strike was proposed in order to obtain a modification of the Cheney award, which modification, if effected, would apply generally to employees in the future, whereas the strike proposed in the instant case was threatened in order to force a settlement of the alleged past grievances of individual employees without resort to administrative process.

But neither the Court of Appeals for the Seventh Circuit nor the Court of Appeals for the Fifth Circuit, nor did the District Court in either the *Central of Georgia* case or in the instant case, even intimate, much less posit, reliance upon this factual difference as a basis for construing the National Railway Labor Act or the Norris-LaGuardia Act.

On the contrary, as the excerpts quoted above show and as is, if possible, even more clear by a comparative reading of the full opinions in both of the cases, the Court of Appeals for the Fifth Circuit has held that the Norris-LaGuardia Act is untouched by the National Railway Labor Act, whereas the Court of Appeals for the Seventh Circuit has held the direct contrary of this proposition.

Moreover in both cases the carrier relied upon the creation of the National Railroad Adjustment Board by the 1934 Amendment as an implied outlawry of strikes over disputes that would be referable to that Board.

As we demonstrate in the remainder of this petition, this Court has never passed on the question whether, in a suit

between railroad employees and their employers in which a strike was threatened, the National Railway Labor Act abridges the Norris-LaGuardia Act although it has considered disputes arising between competing unions or a union and non-union members in which an injunction was sought³ and has dealt with questions where railway employees, not employers, have sought injunctive relief.⁴

II.

THE PURPOSE OF THE RAILWAY LABOR ACT IS TO ENCOURAGE BUT NOT TO COMPEL ADMINISTRATIVE SETTLEMENT OR DETERMINATION OF CONTROVERSIES BETWEEN CARRIERS AND LABOR AND TO DISCOURAGE BUT NOT TO FORBID STRIKES AS AN ALTERNATIVE MEANS OF RESOLVING SUCH CONFLICTS.

We may thus briefly state the essence of the first of petitioners' only two contentions:⁵

³ Cases relied upon by the Court of Appeals for the Seventh Circuit, respondents in the instant case, and the Central of Georgia Railway Company in the *Central of Georgia* case are cited, considered and clearly distinguished in the closing passages of the Reasons Relied on for Allowance of the Writ, *post*.

⁴ Petitioners' contention that the Congress did not intend by the Railway Labor Act to prohibit strikes of any kind is logically distinct from their contention that even if that Act was intended to enact such a prohibition, it was not the intention of the 1934 amendment to repeal *pro tanto* the Norris-LaGuardia Act but was the intention of Congress to remit the carriers and the government to such other remedies, civil or criminal, as might be otherwise available.

However, although the propositions are logically distinct, considerations of policy, materials of legislative history and arguments as to construction of the National Railway Labor Act are common to a discussion of both propositions.

Hence most of the presentation made by petitioners under the instant Point II, devoted to the proposition that the Railway Labor Act does not forbid strikes, is relevant under Point III, *post*, which is devoted to arguing that even if the National Railway Labor Act was intended to forbid strikes, it does not implement that prohibition by restoring injunctive jurisdiction to Federal Courts.

The legislative process that finally eventuated in the enactment of the National Railway Labor Act was indeed, as the Court of Appeals correctly recognizes, the expression of a very real Congressional desire to minimize strikes in the area of railway transportation. Such strikes are costly to railroads, to the public and to labor itself. No one—certainly not labor, which is the segment of the national economy that first feels the pinch of missing pay envelopes—would gainsay the desirability of *fairly and promptly* resolving disputes between working men and their employers by means other than strikes.

The question that so evidently confronted the Congress was, "Granted that we wish to minimize strikes, which are the most drastic economic sanction available to labor short of unlawful violence, shall we achieve that end by interdicting strikes, either by direct congressional prohibition or by an attenuation of the Norris-LaGuardia Act, or shall we dissuade *but not prohibit* railway labor from striking by providing an attractive *but not compulsory* alternative to the strike as a legitimate means of economic campaign?"

That Congress was acutely and intensely aware of this important question is as evident from the legislative materials relied upon by the plaintiff railroad as it is from those relied upon by the defendant Brotherhood.

To be sure, the excerpts from legislative history invoked by the plaintiff point in one direction. The legislative materials relied upon by the Brotherhood point in a diametrically opposite direction. But all of the legislative history indicates that Congress was aware, not oblivious of the very obvious question, "Shall we or shall we not forbid strikes?"

That Congress intended to discourage *but did not intend to prohibit* strikes and that Congress certainly did not intend to re-invest Federal courts with jurisdiction to *enjoin*

strikes seems clear to us from the following passages of legislative history:

Congressman Pettengill stated at the House Hearings (House Committee on Interstate and Foreign Commerce, 73rd Cong. 2nd Sess. on H. R. 7650) at p. 58:

"Well, I know that we all indulge the hope that matters as important to the public as uninterrupted train service shall not be interrupted, if possible, and that means shall be provided so that those strikes may not happen; but I am not prepared to go so far as to say that labor shall, by law, be required to abandon that ancient weapon which has been recognized by the Supreme Court over and over again." (Emphasis supplied.)

Congressman Cooper of the Committee voiced similar sentiments (at pp. 60, 61).

At this point, there occurred the only discussion on the specific question before this Court which is whether a Federal court has jurisdiction to enjoin a strike over grievances.

Commissioner Eastman, draftsman of the 1934 amendments, when asked by Congressman Wolverton whether the bill contained any provision that would enable the court to obtain an injunction against a labor organization, replied:

"Well, I am not able to give you an answer to that. That is a legal question to be frank with you, that I have not gone into." (At p. 61.)

Later Eastman stated (again at p. 61):

"Now the only question I am in doubt about is whether or not there should be an injunction under this Act to prevent a strike. Now, I am not clear about that."

Mr. Carmalt, Eastman's legal adviser, said,

"Now, the question of strike had not arisen in connection with it until this morning (referring to the power of courts to enjoin strikes over grievances) at p. 63."

"Mr. Wolverton: Is it your opinion that there should be such a provision in the bill or not?"

"Mr. Carmalt: I hesitate to talk effectuating a policy in that regard.

"Mr. Wolverton: I am only asking you to express your opinion."

Carmalt then continues:

"I would not say that it (the bill) gives any authority in that regard (whether an injunction could issue to prevent an organization from going on strike), because it was assumed that would be true, I think, but there has been no discussion of it until this morning" (at p. 63).

Commissioner Eastman then took up the colloquy:

"Commissioner Eastman: I may say, so far as I am concerned, it had not seemed to me that matter was of a contingency of importance, because I cannot conceive of organizations striking over the settlement of grievances, particularly when they had been passed upon by an impartial tribunal under Government auspices.

"It is serious enough thing to strike when a major matter is involved; but when you have only minor grievances and they have had full opportunity to be heard and have had their day in court before a tribunal, it hardly seems to me that that was a question that was likely to arise. *My own idea would be, let that question arise out of experience and find out whether there is actual need for any such power before you provide for issuing injunctions for preventing strikes.*

The above excerpts are Commissioner Eastman's final remarks concerning the problem as to whether strikes are enjoined under Section 153 of the Railway Labor Act. Eastman's statement that experience should determine "whether there is actual need for any such power before you provide for issuing injunctions for preventing strikes" declares the opinion of the draftsman of the 1934 Amendments of the

Railway Labor Act to be that the act did *not* provide "for issuing injunctions for preventing strikes."

We recognize, as noted in the opinion of the Court of Appeals for the Seventh Circuit in the instant case, that one Harrison, a legislative representative of petitioner Brotherhood, said at a hearing before a Senate Committee on the Bill for the 1934 Amendments that:

"We are now ready to concede that we can risk having our grievances go to a board and get them determined, and that is a contribution that these organizations are willing to make."

In the first place, petitioner is not bound by the statements of its legislative representative although concededly such statements are material legislative history.

In the second place, Mr. Harrison's views, those of a laboring man, should not be given weight equal to that accorded to the deliberate expressions of Commissioner Eastman, a man of vast experience in the impartial position of member of the Interstate Commerce Commission, who was largely the architect of this important measure.

But to us, so far as legislative history is pertinent, the paramount consideration is, not the opinion of any spokesmen for or opponent of any version of legislative draftsmanship that was ultimately merged in the National Railway Labor Act, but the fact that spokesmen for, opponents of, and presumably neutrally inquiring critics of the bill all perceived the presence and importance of the question whether strikes of any kind were to be prohibited and, *having perceived the question, appreciating its importance and being fully cognizant of the provisions of the Norris-LaGuardia Act enacted only about two years previously, refused to enact into law any repeal of that important statute!*

We can put the matter thus tersely:

Congress knew that the Norris-LaGuardia Act withdrew from Federal courts the jurisdiction to enjoin strikes of the kind involved in this case. It knew that the National Railway Labor Act, both as proposed and as enacted, was intended to discourage strikes. It was aware of the question whether the National Railway Labor Act, if amended, would or would not, should or should not, repeal, amend or abridge the Norris-LaGuardia Act.

Cognizant of that question and of its very great moment, Congress with measured deliberation failed to answer the question.

It is thus clear that Congress had no active intention to repeal the Norris-LaGuardia Act and therefore must have intended to continue it in force.

Congress was aware, both at the time of the enactment of the Norris-LaGuardia Act and at the time of the enactment of the National Railway Labor Act, of the history of injunctions against strikes in both State and Federal courts. It was aware, not presumably but actually, of the debates in the arenas of economics, practical and ideal politics and social ethics as to whether labor has or should have the "right to strike" and as to whether even if labor is not to possess that right, the right shall be abridged by injunction and the drastic sanctions of contempt proceedings, with or without trial by jury, even where the strike is concededly unlawful, contrary to public policy or not in the interests of public welfare.

Having pondered these momentous issues, Congress uttered the National policy explicit in the Norris-LaGuardia Act.

The teachings of this Court's leading decisions expository of the Norris-LaGuardia Act were thus incisively summarized and their impact appraised, correctly, we submit,

by the Court of Appeals for the Fifth Circuit in the *Central of Georgia* case in the following language:

"For, as has been held time and again, the purpose of the strike, whether it is or is not legal, is not a limitation upon the prohibitions of the statute. Cf. *Wilson & Co. v. Birl*, 105 F. 2d 948, and *East Texas Motor Freight Lines v. Teamsters*, 163 F. 2d 10, where this court held that such a contention was an attempt to enlarge Federal Court jurisdiction as limited by the Act. Cf. *Milk Wagon Drivers Union v. Lake Valley Farm Products*, 311 U. S. 91, and 43 C. J. S. 748 and 29 A. L. R. (2) 360."

The Norris-LaGuardia Act is not only directly inhibitory of the injunctive process against even unlawful strikes but is strongly confirmatory of the substantive right to strike in the general case, that is, where the right to strike is neither attended by or intended to coerce unlawful action.

Extreme reactionaries, like extreme radicals, would impress the service of labor by coercive measures, injunctive in form and summary in sanction.

Congress, however, gave enactment to a median philosophy: It was the will of Congress that the right to strike should not be abridged, *at least by injunction*, at the behest either of a capitalistic employer or of a socialist state.

It is this philosophy that, so respondents contend and so the Court of Appeals for the Seventh Circuit has held, succumbed to implied repudiations *only as to railway labor* two years after it was enacted.

And this is true, so respondents contend and so the Court of Appeals below has held, although the "repeal" was achieved by cryptic intimation, not by overt declaration, although Congress explicitly pondered and debated the matter!

Surely, had Congress intended a retraction of the policy of the Norris-LaGuardia Act, it would have so declared in unmistakable terms.

Is this connection, we deem it important to observe and strongly emphasize that it is not enough to grant that Congress had no active intention to continue in effect the policy of the Norris-LaGuardia Act. It must clearly appear that Congress had an active and affirmative intention to repeal this Act before the Act may be said to be repealed by implication.

III.

EVEN IF THE NATIONAL RAILWAY LABOR ACT WAS INTENDED TO INHIBIT STRIKES OVER MINOR GRIEVANCES, IT WAS NOT THE INTENTION OF CONGRESS SO FAR TO REPEAL THE NORRIS-LA GUARDIA ACT AS TO IMPLEMENT THAT INHIBITION BY FEDERAL INJUNCTIONS.

Under Point II of these Suggestions, *ante*, we have, we believe, demonstrated that it was not the intention of Congress to proscribe the right to strike at all even though it was the intention of that Act to provide an attractive alternative to the exercise of that right.

But even if it be assumed *arguendo* that Congress intended to prohibit strikes by railway-labor, it does not follow without express congressional utterance that Congress intended to implement that prohibition by restoring the right to injunction.

Even where a strike is or may be plainly illegal, the Norris-LaGuardia Act (unless amended *pro tanto* by the tenuous inferences drawn by the Court of Appeals for the Sev-

enth Circuit) withdraws Federal jurisdiction to grant an injunction.

In *Milk Wagon Drivers' Union v. Lake Valley Farm Products, Inc.*, 311 U. S. 91, the Court said at p. 102:

"The Norris-LaGuardia Act, passed in 1932, is the culmination of a bitter political, social and economic controversy extending over half a century. Hostility to 'government by injunction' had become the rallying slogan of many and varied groups."

Summing up its conclusions, the Court said at page 103:

"For us to hold in the face of this legislation, that the federal courts have jurisdiction to grant injunctions in cases growing out of labor disputes, merely because alleged violations of the Sherman Act are involved, would run counter to the plain mandate of the Act and would reverse the declared purpose of Congress."

The reasoning of the Court of Appeals for the Seventh Circuit in the instant case was that (1) the threatened strike, if consummated, would contravene the policy enacted by the National Railway Labor Act, a premise that petitioners concede only to the limited extent and in the restricted sense that it was the intent of the National Railway Labor Act to discourage strikes but not to prohibit them, (2) hence the strike violated the provisions of the National Railway Labor Act, a proposition that petitioners resist and (3) therefore injunctive remedy was available even though the Court found it necessary to imply a repeal *pro tanto* of the Norris-LaGuardia Act.

Even if it be conceded, and it is not conceded, that the strike violated the National Railway Labor Act, it would not follow that *injunctive* remedy is available. It is not novel jurisprudence to withhold remedy by injunction or, indeed, any other or all equitable remedies although violations of common law, statutory or even constitutional rights are clear and admitted.

This is so even when rights at common law or criminal sanctions are plainly inadequate to vindicate the substantive rights of the complaining parties.

In the fields of racial segregation, antitrust law, unfair trade and many other fields of law intended to preserve the rights of the public, as well, of course, as in many cases involving contractual and other private rights where only the interests of the immediate parties are involved, there is nothing new in withholding injunctions, judgments for specific performance or other equitable relief although violations of legal rights are palpable and an action for damages is clearly inadequate.

Congress may well deem the Draconian remedy of injunction a cure worse than the disease of occasional irresponsible, even illegal, strikes.

This philosophy has found express application under the Norris-LaGuardia Act.

In each of the following cases a United States Court of Appeals has either recognized or assumed that a strike would be illegal and yet has held that the Norris-LaGuardia Act inhibits injunction:

East Texas Motor Freight Lines v. Teamsters, 163 F. 2d 10 (C. A. 5, 1947), holding that a claim that the Act sought to be enjoined violated the Motor Carriers' Act, even if well founded, would not support jurisdiction to issue an injunction.

Wilson v. Birl, 105 F. 2d 1948, in which the Court said at page 952:

"Moreover, the words 'unlawful acts' in Section 7 (a), which must be alleged in the complaint and included in the findings, cannot be read separately from the rest of the section, and assume appropriate meaning only when we consider the section as a whole. Irreparable injury to the complainant's property, which has no police protection, is an essential averment and finding; and the 'unlawful acts' do not constitute a

general reference to anything that may be considered illegal, but specifically to the acts of violence which the authority of the executive is calculated to control."

In this case, too, it was held that the threatened strike would involve both the employer and the employees in violation of the Federal Motor Carriers' Act. However, the Court said at page 934:

"But whatever other remedies may or may not be available, there is nothing in the exactions of the Motor Carrier Act which operates to enlarge beyond the limitations of the Norris-LaGuardia Act the jurisdiction of a United States Court in respect to the issuance of a restraining order or a temporary or permanent injunction in a controversy involving or growing out of a labor dispute.

Most pertinent are this Court's decisions in *General Committee v. M. K. T. R. Co.*, 320 U. S. 325, and in the companion cases decided the same day, *Switchmen's Union v. Natl. Mediation Bd.*, id. 297, and *General Committee v. Southern-Pac. R. Co.*, id. 338.

In all of those cases disputes between rival labor organizations, unresolved by the apparatus provided by the National Railway Labor Act, resulted in suits for injunction.

This Court declined to reach the merits in those cases because it held that Federal jurisdiction of equitable character was absent.

The Court, after adverting tersely but comprehensively to the history of the Railway Labor Act, said at pages 332-3:

"In short, Congress by this legislation has freely employed the traditional instruments of mediation, conciliation and arbitration. Those instruments, in addition to the available economic weapons, remain unchanged in large areas of this railway labor field. On only certain phases of this controversial subject has Congress

utilized administrative or judicial machinery and invoked the compulsions of the law. Congress was dealing with a subject highly charged with emotion. Its approach has not only been slow; it has been piecemeal. Congress has been highly selective in its use of legal machinery. The delicacy of these problems has made it hesitant to go too fast or too far. *The inference is strong that Congress intended to go no further in its use of the processes of adjudication and litigation than the express provisions of the Act indicate.*

"That history has a special claim here. It must be kept in mind in analyzing a bill of complaint which, like the present one, seeks to state a cause of action under the Railway Labor Act and asks that judicial power be exerted in enforcement of an obligation which it is claimed Congress has created."

The language emphasized above, "The inference is strong that Congress intended to go no further in its use of the processes of adjudication and litigation than the express provisions of the Act indicate", expresses this Court's deliberate opinion that there should be no adjudication under the Act that the Act does not specifically authorize. *A fortiori* then, the Act should not be read as repealing by implication the Norris-LaGuardia Act.

It seems clear to us, as it was clear to the court in the *Central of Georgia* case, that even if Congress intended to prohibit strikes by the National Railway Labor Act, it is unthinkable that it intended to restore the remedy of injunction in repudiation of the Norris-LaGuardia Act, only two years after its passage, in the absence of the plainest of language to accomplish that result.

CASES RELIED UPON BY RESPONDENTS. THE COURT OF APPEALS FOR THE SEVENTH CIRCUIT AND THE DISSENT IN THE CENTRAL OF GEORGIA CASE DISTINGUISHED.

It is significant that never once since the enactment of the National Railway Labor Act has this Court sustained an injunction *sought by a railway employer* to restrain a strike.

The following cases, cited by respondents, the Court of Appeals for the Seventh Circuit and the dissenting opinion in the *Central of Georgia* case, may thus be tersely distinguished:

1. *Virginian Ry. Co. v. System Federation* No. 40, 300 U. S. 515, 81 L. ed. 789, 57 S. Ct. 592, involved an injunction sought by it to compel a railway carrier to recognize and treat with their union, the only authorized bargaining representative, as is required by Section 2 of the Railway Labor Act. But, there it was the *carrier* who sought the *protection of the Norris-LaGuardia Act*, seeking to rely upon its Section 9 (109), which deals with the *scope* of injunctions. No *strike*, or any other act enumerated in Section 4 (104), *was even involved* in that case. The court merely held that the Norris-LaGuardia Act was not passed to shield the actions of a carrier which had violated the Railway Labor Act. Obviously, a railroad's duty to treat with an employees' bargaining representative (Railway Labor Act's Section 2), is not one of those acts exempt from injunction by the Norris-LaGuardia Act's Section 4 (104).

2. *Graham v. Brotherhood of Locomotive Firemen and Enginemen*, 338 U. S. 232, 94 L. ed. 22, 70 S. Ct. 14, dealt with an injunction issued in favor of *employees* against certain railroads and a union restraining compliance with a collective labor agreement which discriminated against colored firemen. Like the *Virginian Ry.* case, *supra*, no *strike* or

any other act exempted by Section 4 (104) of the Norris-LaGuardia Act was involved. So, this court held that

"the Norris-LaGuardia Act (29 U. S. C. Secs. 101 *et seq.*) did not deprive Federal courts of jurisdiction to compel compliance with positive mandates of the Railway Labor Act (45 U. S. C. Secs. 151 *et seq.*) enacted for the benefit and protection, within a particular field, of the same groups whose rights are preserved by the Norris-LaGuardia Act".

While the Court held that the controversy there was a labor dispute, nevertheless it further said that the Railway Labor Act imposed upon the bargaining representative the duty to represent all without hostile discrimination. Accordingly, it said that the Norris-LaGuardia Act did not "contain anything to suggest that it would deprive these Negro firemen of recourse to equitable relief from illegal discriminatory representation by which there would be taken from them their seniority and ultimately their jobs." No strike, or any other act enumerated and protected against injunction by Section 4 (104) of the Norris-LaGuardia Act was even involved there.

3. *Texas and New Orleans Railroad Company v. Brotherhood of Railway and Steamship Clerks*, 281 U. S. 548, 74 L. ed. 1034, 30 S. Ct. 427, involved an injunction by employees against a railway carrier to restrain the company's influence and coercion of them with reference to their organization and designation of their collective bargaining representative under the Railway Labor Act as it existed before the 1934 amendment. Such created a duty, which was judicially enforceable. Again no strike or any other act protected against injunction by Section 4 (104) of the Norris-LaGuardia Act, was involved.

Moreover the Norris-LaGuardia Act had not even been passed when this case was decided.

4. *Brotherhood of Railroad Trainmen v. Howard*, 343 U. S. 768, 96 L. ed. 1293, 72 S. Ct. 1022, was another Negro discrimination decision in which, like *Graham, supra*, certain railway employees obtained an injunction against enforcement of a racially discriminatory agreement made by their carrier and bargaining representative, this court holding that such an agreement was void and unenforceable. In so deciding it held that the trial court had jurisdiction, regardless of the Norris-LaGuardia Act, citing the other racial discrimination cases of *Steele* (323 U. S. 192, 89 L. ed. 173, 65 S. Ct. 226), and *Graham, supra*. Nothing in the *Howard* case is supportive of petitioner's contention. Here again, in the *Howard* case, there was no strike or any other of the acts specified in Section 4 (104) of the Norris-LaGuardia Act.

None of the *Virginian Ry. Co.*, *Graham Texas and N. O. Ry Co.*, and *Howard* cases involved either a (1) strike, or (2) any other activity insulated by Section 4 (104) of the Norris-LaGuardia Act or (3) the Adjustment Board. On the contrary, *all* of these cases involved injunctions granted (1) at the instance of *employees* against their railway carrier *employer* and (2) for protection of their rights as contemplated by the Norris-LaGuardia Act.

5. *Order of Railway Conductors v. Pitney*, 326 U. S. 561, 90 L. ed. 318, 66 S. Ct. 322, is next cited. There the Court *denied* an injunction. Furthermore, the case did not involve either (1) a strike or (2) any other activity embraced in Section 104, of the Norris-LaGuardia Act. Actually, it involved a dispute primarily *between two railway brotherhoods*, each claiming that its respective contract with the railway carrier entitled it to the work in question. The carrier was in reorganization, and filed in the *federal court* an *equitable* proceeding in the nature of a petition to instruct its trustee and for injunction. This case involved an interpretation of the labor contracts of two competing unions.

The court held that until those contracts had been construed by the National Railroad Adjustment Board, one could not tell whether the conductors were entitled to perform the work which they were asking to have enjoined from being to the competing union. We submit it is fallacious to argue that the denial of an injunction is proof of the court's power to grant one. The court stayed dismissal of the action as it involved a question of instructions to the court's trustee. The petitioner's argument that the court's purpose in granting the stay was to maintain the status quo is wholly misleading and incorrect.

6. *Elgin, Joliet and Erie Ry. Co. v. Burley*, 325 U. S. 711, 89 L. ed. 1886, 65 S. Ct. 1282, is important because it differentiates between "grievances" and "major disputes" *only* insofar as their administrative handling is concerned. It does *not* involve either (1) an injunction or (2) a strike or any other of the acts insulated by Section 104 of the Norris-LaGuardia Act. Like *Pitney*, it does not even mention that act. At the outset it referred to certain language in the *Moore* case (*Moore v. Illinois Central Ry. Co.*, 312 U. S. 630, 85 L. ed. 1089, 61 S. Ct. 754), to-wit, that the machinery provided for settling disputes was *not* "based on a philosophy of legal compulsion" but created "a system for peaceful adjustment and mediation voluntary in its nature," and its holding that resort to Adjustment Board may not be necessary in a case involving unlawful discharge. The court points out that another of the Railway Labor Act's "primary commands, judicially enforceable" is the duty to negotiate. But, nowhere in the *Burley* decisions can be found any support that a United States District Court may enjoin a strike, as contended here.

7. *Slocum v. Del., Lakawanna & Western Railroad Co.*, 399 U. S. 239, 94 L. ed. 795, 70 S. Ct. 577, is similar to the *Pitney* case, applying its doctrine to state courts. No in-

junction or other equitable relief was sought in the *Slocum* case. There was no strike. The Norris-LaGuardia Act was not even mentioned. What this Court said as to the "exclusiveness" of the jurisdiction of the National Railway Adjustment Board related solely to the exclusiveness of administrative, as opposed to judicial authority. The Court did not touch the question of settlement by voluntary means or the use of economic pressure.

8. *Order of Railway Conductors of America v. Southern Railway Company*, 339 U. S. 255, 94 L. ed. 811, 70 S. Ct. 585, was like the *Slocum* case in that the carrier had filed in the State court its petition for declaratory judgment to interpret a collective bargaining agreement. This court, at the outset, remarked that the case presented "the same statutory question as" the *Slocum* case, and held that "for reasons set out in the *Slocum* case . . ." the South Carolina State Court was without power to interpret the terms of this agreement and to adjudicate the dispute. Certainly, nothing in that case is supportive of petitioner's position for an injunction against a strike.

In the *Pitney*, *Slocum* and *Southern Ry.* cases the doctrine of exclusive administrative jurisdiction constituted a valid defense against the carriers' efforts to obtain judicial relief. In the case at bar the carrier seeks to invoke that doctrine as supportive of an injunction in its behalf. In fact, in the three cases mentioned no such use was made of the doctrine. In *Pitney* an injunction was denied because of the doctrine. It is apparent that the cases cited do not in any way justify the use which petitioner is attempting to make of that doctrine.

9. The last decision of this court relied upon by the Court of Appeals below is *Cook County National Bank v. United States*, 107 U. S. 445, 27 L. ed. 537, 2 S. Ct. 561. The opinion in very general terms, which the court used to ex-

press the repeal or supersession of the insolvency act of 1797 by the National Banking Law enacted some decades later. We do not quarrel with the principle there stated except to point out that repeals by implication are not favored.

The character of the banking laws and the character of the Railway Labor Act as repealing statutes by implication are not at all alike. Moreover the time element between the National Banking Laws and the Insolvency Laws of 1797 and the time of approximately two years between the Norris-LaGuardia Act and the Railway Labor Act are totally dissimilar. It is impossible to see why the reason for the repeal of the insolvency laws of 1797 by the banking act forms any grounds whatever for the repeal of the Norris-LaGuardia Act by the Railway Labor Act. As the language of this Court's opinion says,

"The question is one respecting the intentions of the Legislature."

Conclusion on the Merits.

The considerations above developed demonstrate that Congress did not intend to forbid strikes by the enactment of the National Railway Labor Act.

The conclusion is even clearer that if Congress did intend to prohibit strikes by railway labor, it did not intend to repeal the Norris-LaGuardia Act so as to implement that prohibition by injunction.

This is true whether the disputes involved are "major" or "minor" and whether they have for their object the redress of alleged past grievances or the fulfilment of demands for future benefits.

IV.

THIS CASE IS OF SUFFICIENT IMPORTANCE TO ELICIT CERTIORARI.

Even if there were no conflict of judicial authority, the questions presented in this case are of sufficient moment to labor, management and the public to elicit *certiorari*.

But there is direct and irreconcilable judicial conflict.

The Court of Appeals for the Seventh Circuit has held that the National Railway Labor Act repeals, at least as to strikes over minor grievances, the Norris-LaGuardia Act.

The Court of Appeals for the Fifth Circuit has reached a contrary conclusion and has declared that it was not the intention of Congress to abridge *to any extent* the Norris-LaGuardia Act by the National Railway Labor Act.

It is significant to note that the District Courts in the instant and in the *Central of Georgia* cases were also in conflict.

The District Court in the instant case sustained the Contention of the Brotherhood of Railroad Trainmen. The District Court in the *Central of Georgia* case rejected the contention of that Brotherhood.

Each Court of Appeals reversed its respective District Court.

Even if none of the views expressed in the decisions of the courts below in this case and in the *Central of Georgia* case had the dignity of a judicial decision, the contrariety of opinion of experienced jurists would still testify to the presence of an important question that should be resolved by this Court.

PRAYER FOR CERTIORARI.

For the reasons urged in this petition, petitioners respectfully seek this Court's writ of *certiorari* to review and reverse the judgment of the Court of Appeals for the Seventh Circuit in this case.

Respectfully submitted,

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APPENDIX I.

**THE CHICAGO RIVER AND INDIANA RAILROAD
COMPANY, et al.,**

v

**BROTHERHOOD OF RAILROAD TRAINMEN, Appellees,
229 F. 2d 926.**

Before FINNEGAN, LINDLEY and SCHNACKENBERG, Circuit Judges.

SCHNACKENBERG, Circuit Judge.

By amended complaint the Chicago River and Indiana Railroad Company¹ and 27 other railroads prayed for an injunction to restrain the Brotherhood of Railroad Trainmen² from calling a threatened strike against the River Road. Trainmen's counsel state that the purpose of said strike is to settle 21 grievances and claims through collective bargaining rather than by an award of the National Railroad Adjustment Board.³ The district court granted a restraining order which was later dissolved when the court decided that the Norris-LaGuardia act was applicable and, therefore, it lacked jurisdiction to grant the relief sought. It dismissed the cause. The court subsequently granted an injunction pending the determination of this appeal, which was taken from the judgment of dismissal.

The grievances of the employees involved are 19 claims for additional compensation, 1 claim for reinstatement to a higher position, and 1 claim for reinstatement to the employ of the River Road. Each of these claims was presented to the railroad superintendent who handles such cases. Each was appealed to the highest railroad officer designated to handle claims under § 3, First (i) of the Railway Labor Act, 45 U.S.C.A. § 153, First (i), and was denied by him.

The amended complaint charges that this strike would halt the operations of all trains into and out of the Chicago

¹ Sometimes referred to herein as "River Road".

² Sometimes referred to herein as "Trainmen".

³ Sometimes referred to herein as the "Board".

Stockyards, force the River Road to lay off 1,100 employees, who would lose in excess of \$12,000 a day in wages, cost the company thousands of dollars a day, and require the embargo of all shipments into and out of the Stockyards, causing irreparable damage to the 27 railroads (the other plaintiffs) and the 600 industries served. The Trainmen's answer alleges that they do not have sufficient information to form a belief as to the truth or falsity of these charges and, therefore, they deny the same. The amended complaint was dismissed without the taking of evidence.

The amended complaint and the answer show that the River Road, on July 15, 1954, submitted to the Board the claims in dispute and the Board has not yet rendered a decision on any of them.

The first contested issue herein, as stated by the Trainmen, is: "Does the Railway Labor Act prohibit a union from striking over claims and grievances, matters which are within the jurisdiction of the National Railroad Adjustment Board?" Plaintiffs say that it is mandatory under the Railway Labor Act that minor disputes⁴ be adjusted instead of being made the subject of a strike. They contend that such command must be enforced, even though the act itself does not provide enforcement machinery, and that an injunction is appropriate to this end. The Trainmen contend that the Railway Labor Act does not prohibit a union from striking over claims and grievances though such matters are within the jurisdiction of the Board. Their answer avers that the effect of the strike, if successful, would be settlement of said disputes through collective bargaining instead of by award of the Board.

1(a). The Railway Labor Act of 1926, as amended in 1934,⁵ expressly states its purposes,⁶ the first of which is "To avoid any interruption to commerce or to the operation of any carrier engaged therein;" and the fifth of which is "to provide for the prompt and orderly settlement of all disputes growing out of grievances * * *."

(1-3) The difference between disputes over grievances and disputes concerning the making of collective agreements

⁴ It is agreed that the claims and grievances which are the subject of the suit at bar are all so-called "minor disputes".

⁵ 45 U.S.C.A. § 151 et seq.

⁶ Ibid. § 151a.

is traditional in railway labor affairs. It has assumed large importance in the Railway Labor Act of 1934, substantively and procedurally. *Elgin, J. & E. R. Co. v. Burley*, 325 U.S. 711, at page 722, 65 S.Ct. 1282, at page 1289, 89 L.Ed. 1886. As to disputes over grievances, the act contemplates the existence of a collective agreement already concluded or, at any rate, a situation in which no effort is made to bring about a formal change in terms or to create a new one. Such a dispute relates either to the meaning or proper application of a particular provision with reference to a specific situation or to an omitted case. So-called minor disputes, involving grievances, the 1934 act sets apart from major disputes and provides for them very different treatment. The court said, 325 U.S. 724, 65 S.Ct. 1290:

"The Act treats the two types of dispute alike in requiring negotiation as the first step toward settlement and therefore in contemplating voluntary action for both at this stage, in the sense that agreement is sought and cannot be compelled. To induce agreement, however, the duty to negotiate is imposed for both grievances and major disputes.

"Beyond the initial stages of negotiation and conference, however, the procedures diverge. 'Major disputes' go first to mediation under the auspices of the National Mediation Board; if that fails, then to acceptance or rejection of arbitration, cf. § 7; (*Brotherhood of Railroad Trainmen v. Toledo, P. & W. R. Co.*, 321 U.S. 50, 64 S.Ct. 413, 88 L.Ed. 534; and finally to possible presidential intervention to secure adjustment. § 10. For their settlement the statutory scheme retains throughout the traditional voluntary processes of negotiation, mediation, voluntary arbitration, and conciliation. Every facility for bringing about agreement is provided and pressures for mobilizing public opinion are applied. The parties are required to submit to the successive procedures designed to induce agreement. § 5, First (b). But compulsions go only to insure that those procedures are exhausted before resort can be had to self-help. No authority is empowered to decide the dispute and no such power is intended, unless the parties themselves agree to arbitration.

"The course prescribed for the settlement of grievances is very different beyond the initial stage. There-

after the Act does not leave the parties wholly free, at their own will, to agree or not to agree. On the contrary, one of the main purposes of the 1934 amendments was to provide a more effective process of settlement.

"Prior to 1934 the parties were free at all times to go to court to settle these disputes. * * * Several organizations took strike ballots and thus threatened to interrupt traffic, a factor which among others induced the Coordinator of Transportation to become the principal author and advocate of the amendments. The sponsor in the House insisted that Congress act upon them before adjournment for fear that if no action were taken a railroad crisis might take place. * * * the Adjustment Board was created and given power to decide them."

The court then said, 325 U.S. 727, 65S.Ct. 1291:

"The procedure adopted is not one of mediation and conciliation only, like that provided for major disputes under the auspices of the Mediation Board. Another tribunal of very different character is established with 'jurisdiction' to determine grievances and make awards concerning them. Each party to the dispute may submit it for decision, whether or not the other is willing, provided he has himself discharged the initial duty of negotiation. § 3, First (i). Rights of notice, hearing, and participation or representation are given. § 3, First (j). In some instances judicial review and enforcement of awards are expressly provided or are contemplated. § 3, First (p); cf. § 3, First (m). When this is not done, the Act purports to make the Board's decisions 'final and binding.' § 3, First (m)."

The procedure prior to 1934 was in fact and effect nothing more than one for voluntary arbitration. No dispute could be settled unless submitted by agreement of all parties. The Board was created to remove the settlement of grievances from this stagnating process and bring them within a general and inclusive plan of decision. The aim was not to dispense with agreement. It was to add decision where agreement fails and thus to safeguard the public as well as private interests against the harmful effects of the pre-existing scheme. *Elgin, J. & E. R. Co. v. Burley, supra*, 325 U.S. 727, 65 S.Ct. 1292.

At a hearing before a senate committee on the bill for the 1934 amendments, the Railroad Brotherhoods' representative, Mr. Harrison, stated:

"These railway labor organizations have always opposed compulsory determination of their controversies. We have lived a long time and got a lot of experience, and we know that these minor cases that develop out of contracts that we make freely, and . . . we are now ready to concede that we can risk having our grievances go to a board and get them determined, and that is a contribution that these organizations are willing to make'". 325 U.S. 728, note 24, 65 S.Ct. 1292.

(4) As to major disputes, the act requires the parties to submit to the successive procedures designed to induce agreement. § 5, First (b). But compulsions go only to insure that those procedures are exhausted before resort can be had to self-help. That means, that as to disputes over the formation of collective agreements or efforts to secure or change them, the issue not being whether an existing agreement controls the controversy, the act recognizes the right of employees to strike, but postpones such action until the successive procedures set up by the act have been exhausted. No authority is empowered to decide this dispute, unless the parties agree to arbitration.

(5) On the other hand, as to minor disputes, such as those relating to grievances and claims, either party may submit a dispute to the Board for decision, *whether or not the other is willing*, provided he himself has discharged the initial duty of negotiation. Except in instances where judicial review and enforcement of awards are expressly provided for or contemplated by the act, § 3, First (p); cf. § 3, First (m), the Board's decisions are final and binding. We hold this to mean that a strike in regard to such minor disputes, or the Board's decisions thereon, would be illegal.

(b). Plaintiffs contend that, inasmuch as it is mandatory under the Railway Labor Act that grievances be adjusted on a submission by either party and that they cannot be the subject of a strike, such command must be enforced, even though the act itself does not provide enforcement machinery. The Trainmen deny this conclusion, "because no provision of the Railway Labor Act prohibits a strike over grievances . . ."

In speaking of the Railway Labor Act of 1926, in *Texas & N. O. R. Co. v. Brotherhood of Ry. & S. S. Clerks*, 281 U.S. 548, 50 S.Ct. 427, 74 L.Ed. 1034, the court was discussing an injunction granted by a district court restraining the railroad company from interfering with its clerical employees in the matter of their organization for the purposes set forth in that act. At page 569 of 281 U.S., at page 433 of 50 S.Ct., it said:

"The creation of a legal right by language suitable to that end does not require for its effectiveness the imposition of statutory penalties. Many rights are enforced for which no statutory penalties are provided.
 * * * The right is created and the remedy exists."

The court affirmed the decree granting the injunction. To the same effect are *Virginian Ry. Co. v. System Federation*, 300 U.S. 515, 57 S. Ct. 592, 81 L.Ed. 789, *Steele v. Louisville & N. R. Co.*, 323 U.S. 192, at page 207, 65 S.Ct. 226, 89 L.Ed. 173, and *Brotherhood of Railroad Trainmen v. Howard*, 343 U.S. 768, 72 S.Ct. 1022, 96 L.Ed. 1283.

(6) We, therefore, hold that the district court has jurisdiction to issue an injunction restraining the Trainmen from striking over grievances and claims, unless the Norris-LaGuardia act prevents or limits the court's power so to do.

(7) 2. The Trainmen say that the second contested issue herein is: "Did the Trial Court err in holding that the Norris-LaGuardia Act was applicable and that it therefore lacked jurisdiction to grant the relief sought by the plaintiffs?" Plaintiffs respond that the Norris-LaGuardia act does not prevent the federal courts from issuing injunctions to enforce compliance with the provisions of the Railway Labor Act. The Trainmen argue that the Norris-LaGuardia act has divested the trial court of jurisdiction to grant the injunction sought against the threatened strike. They take the position that "no restraining order or injunction can be issued enjoining any actual or threatened strike unless the terms and conditions of the Norris-LaGuardia Act are fully complied with. Defendants so contend that such is the law even assuming that the provisions of the Railway Labor Act, here involved, will be violated by the threatened strike."

In enacting the Norris-LaGuardia act in 1932¹ congress sought to correct many of the alleged abuses of the injunctive remedy which labor disputes had brought to national prominence during the quarter century preceding the act. In so doing congress purported to cover the general area comprehended by the term "labor dispute" irrespective of the parties involved or the possibilities of any special situation which might arise. The vital and unique position of the railroad industry in the economy of this country, coupled with experience acquired after the act's enactment, demonstrated in 1934 the need for special methods and techniques of handling labor disputes affecting railroads which were so distinctive as to require special treatment in the public interest.

(8) Accordingly, the 1934 amendments to the Railway Labor Act were enacted. They provided *inter alia* for compulsory and determinative adjustment of minor disputes. As we have already seen, the compulsory features of the Railway Labor Act are enforceable by injunctions issued by the federal district courts. We cannot presume that congress, in so amending the Railway Labor Act in 1934, intended that such an injunction could not issue unless compliance was first had with the act of 1932 dealing with the general subject of injunctions in labor disputes.

(9, 10) The Railway Labor Act, as amended in 1934, embodies a complete plan for avoiding any interruption to commerce or to the operation of any carrier engaged therein.² It is directed to the needs of the railroad industry, employers and employees alike, having in mind the paramount interest of the public. It does not call for the aid of, or submit to, the limitations of the Norris-LaGuardia act. Indeed, the provisions in regard to injunctions prohibiting strikes in labor disputes, as contained in the Norris-LaGuardia act, if controlling in a situation such as we have here, arising under the Railway Labor Act, would practically render the compulsory features of the latter act nugatory. We are unimpressed with the argument of Trainmen's counsel that damages suffered by the many persons who might be injured by such a strike could be compensated in private suits brought therefor. A right to relief by suit

¹ 29 U.S.C.A. § 101 *et seq.*

² 45 U.S.C.A. § 151a.

for damages in such a situation would be an illusory remedy and a poor protection of the public interest. The effect of a strike against the railroads of the nation requires the expeditious intervention of a court to safeguard that interest. This can be accomplished only by the prompt employment of a court's equitable powers, primarily its injunctive power. The compulsion inherent in the Railway Labor Act requires prompt and effective use of judicial machinery and, there being no clear intention contained in that act to the effect that the Norris-LaGuardia act prohibits or limits the issuance of injunctions to implement the Railway Labor Act, we hold that the Norris-LaGuardia act does not apply to the case at bar.

(11) As was said in *Cook County National Bank v. United States*, 107 U.S. 445, 2 S.Ct. 561, at page 566, 27 L. Ed. 537, at page 539:

"A law embracing an entire subject, dealing with it in all its phases, may thus withdraw the subject from the operation of a general law as effectually as though, as to such subject, the general law were in terms repealed. The question is one respecting the intention of the legislature."

When considering the effect of the 1934-amendment which added new provisions in § 2, Ninth, of the Railway Labor Act, in *Virginian Ry. Co. v. System Federation*, 300 U.S. 515, at page 545, 57 S.Ct. 592, at page 598, 81 L.Ed. 789, the court said:

"Neither the purposes of the later act, as amended, nor its provisions when read, as they must be, in the light of our decision in the Railway Clerks case, *supra*; lend support to the contention that its enactments, which are mandatory in form and capable of enforcement by judicial process, were intended to be without legal sanction."

The court held that a decree for a mandatory injunction granted by a district court, for the purpose of enforcing the provisions of § 2, Ninth, of said act, was proper, saying, 300 U.S. at page 552, 57 S.Ct. at page 601:

"More is involved than the settlement of a private controversy without appreciable consequences to the public. The peaceable settlement of labor controversies, especially where they may seriously impair the ability

of an interstate rail carrier to perform its service to the public, is a matter of public concern. That is testified to by the history of the legislation now before us, the reports of committees of Congress having the proposed legislation in charge, and by our common knowledge. Courts of equity may, and frequently do, go much farther both to give and withhold relief in furtherance of the public interest than they are accustomed to go when only private interests are involved."

. In answer to the contention that the Norris-LaGuardia act controlled, the court said, 300 U.S. at page 563, 57 S.Ct. at page 607;

"It suffices to say that the Norris-LaGuardia Act can affect the present decree only so far as its provisions are found not to conflict with those of section 2, Ninth, of the Railway Labor Act (45 U.S.C.A. § 152, subd. 9), authorizing the relief which has been granted. Such provisions cannot be rendered nugatory by the earlier and more general provisions of the Norris-LaGuardia Act."

(12) Insofar as the Railway Labor Act, as we now interpret it, authorizes the issuance of injunctions to prevent strikes over minor disputes, it operates to *repeal* the provisions of the Norris-LaGuardia act, to the extent that the wording thereof might otherwise be said to apply to such railway labor disputes. It follows that, in the case at bar, the district court has jurisdiction to entertain plaintiffs' prayer for injunctive relief.

3. The correctness of the conclusions which we have reached in this case is supported by the legislative history of the Railway Labor Act.*

For the reasons herein set forth, the order from which an appeal has been taken is reversed and the cause is remanded to the district court with instructions to take further proceedings not inconsistent with the views herein expressed.

* See: statement of Mr. Harrison, ante page 5 [930 p. of 229 F.2d]; Elgin, J. & E. R. Co. v. Burley, 325 U.S. 711, at pages 721-729. 65 S.Ct. 1282, 89 L.Ed. 1886; hearings before the Senate Committee on Interstate Commerce, 73d Cong., 2d Sess. (1934) on S. 3266; hearings before the House Committee on Interstate and Foreign Commerce, 73d Cong., 2d Sess. (1934) on H. R. 7650; Senate Report No. 1065 (73d Cong., 2d Sess.); House Report No. 1944 (73d Cong., 2d Sess.) and 78 Cong. Rec. 11710-11720, 12083, 12375.

APPENDIX II.

**BROTHERHOOD OF RAILROAD TRAINMEN, LOCAL
LODGE NO. 721, et al., Appellants,**

v.

**CENTRAL OF GEORGIA RAILWAY COMPANY,
Appellee. No. 15671.**

Before HUTCHESON, Chief Judge, and BORAH and BROWN,
Circuit Judges.

HUTCHESON, Chief Judge.

Brought by their employer in the midst of a labor dispute, against the named defendants and the class of employees represented by them, the suit was for: (1) a temporary injunction restraining them *pendente lite*; from endeavoring by self help to effect a modification or change of an arbitration award known as the Cheney Award and from calling and putting into effect a strike because of plaintiff's refusal to acquiesce in their demands; (2) a judgment declaring the award final and binding and not subject to modification and change; and (3) a final order making the injunction permanent.

The claim was: that, though in compliance with the decision of the Supreme Court of Georgia,¹ that it should do so, and pursuant to the Railway Labor Act, 45 U.S.C.A. § 151 *et seq.*, plaintiff had submitted the controversy between it and the defendants over the Cheney Award to the National Railroad Adjustment Board, the defendants had demanded that a modification of the award be negotiated and had given formal notice that a strike of the employees was being set subject to a satisfactory settlement; that the strike date was once postponed at the intervention of the National Mediation Board, but the mediator had advised plaintiff that his services were fruitless; that the defendants will not agree to leave the matter in status quo pending a decision of the controversy by the National Adjustment Board, and have called a system wide strike against plaintiff to coerce it to adopt defendants' interpretation of the award; and that if

¹ Central of Georgia Ry. Co. v. Brotherhood of Railroad Trainmen, 211 Ga. 263, 85 S. E. 2d 413.

the strike becomes effective it will completely close down plaintiff's operations with resulting irreparable injury.

The defendants filed a motion to dismiss² for want of jurisdiction on the ground, among others, that the petition shows on its face that plaintiff is seeking an injunction in the face of, and contrary to, the Norris-LaGuardia Act, Secs. 101-115, Title 29.

This motion denied and a hearing had, the district judge concluding: that the Norris-LaGuardia Act was not intended by Congress to deprive a district court of jurisdiction to prevent irreparable injury by maintaining the status quo in respect to a controversy which is pending before the National Adjustment Board; and that it was necessary to preserve the status of the controversy now before the Board; granted the preliminary injunction as prayed, enjoining defendants from striking, work stoppage, picketing, or any similar device.

Appealing from the order denying its motion to dismiss, for want of jurisdiction, and the order granting the injunction appellants, presenting four questions³ for our decision, thus summarize their principal argument for reversal:

² "Now comes the Brotherhood of Railroad Trainmen, et al, defendants in the above entitled cause, and moves the court as follows:

"1. To dismiss the action because the petition fails to state a claim against the defendants upon which relief can be granted.

"2. To dismiss the action because the petition shows on its face that the Court is without jurisdiction of the subject matter.

"3. To dismiss the action on the grounds that the Court lacks jurisdiction because the petition shows that the plaintiff has not exhausted its administrative remedy.

"4. The petition shows upon its face that plaintiff is seeking an injunction under circumstances that are prohibited by the laws of the United States, to-wit, the Norris-LaGuardia Act, Title 29, Sections 101-115 and seeks no other relief."

³ These are:

"First. Were all of the requirements of the Norris-LaGuardia Act met so as to authorize an injunction under the facts here involved?

"Second. Did the railway carrier first exhaust its administrative remedies available under the Railway Labor Act so as to authorize an injunction under the facts here involved?

"Third. Is a demand for a change in rates of pay, rules or working conditions, pursuant to the Railway Labor Act, Sec. 4, a justiciable issue and basis for an injunction under the facts here involved?

"Fourth. Did the arbitration award in question conclude and thus prevent negotiation of the demand given by the Brotherhood to the Carrier pursuant to the Railway Labor Act, for compensation for coupling so as to authorize an injunction under the facts here involved?"

"In both the overruling of the motion to dismiss the carrier's complaint and in issuing the temporary injunction against the Brotherhood defendants, the trial court violated the Norris-LaGuardia Act. These violations were numerous, repeated and substantial. Duty and candor compel us to say they were also flagrant. Any one of those violations controls and should alone decide the case. Therefore, we shall treat this feature first, before taking up the additional reasons for reversal."

"The policy of the Act as set forth in Section 102 prevades all of its provisions. It was passed primarily to protect labor, not management. By doing so, it was hoped that all industry, labor and management, would be benefited ultimately and thus that the Act would be in the public interest."

(1) We agree with the appellants that this is so. In the *Carter* case, *Carter v. Herrin Motor Freight Lines*, 5 Cir., 131 F. 2d 557, 560, where the suit was for an injunction, the court upheld the injunction as to those acts which dealt with such violations as trespassing, injuring property, intimidating, or threatening customers, molesting, assaulting, or intimidating employees, but reversed the injunction in respect of all matters which could be construed as prohibiting acts which the statute allows. Saying:

"The language of the act is too plain and the decisions construing it too clear cut and positive to admit of any doubt that the purpose and effect of the act, as a whole, was to give expression to, and make effective, the policy which breathes throughout it. This policy is that labor disputes, as such, with the assembling, the picketing, the persuasion, the stopping of work, the enlisting of sympathy and support, and all the other acts expressly enumerated in Sec. 104, were no longer to be the subject of injunctive action but were, and were expressly recognized to be, legitimate means for advancing the interests of the working man, and, therefore, of the people as a whole. In the light of that policy, which can be made fully effective only when there is a recognition on the part of employer and employee alike that labor disputes as such are not all reprobated but encouraged, and only violence in connection with them is forbidden

• • •

the court went on to hold that the use of injunctions in labor disputes, except for the limited purpose of preventing injury from violence where there was really no adequate remedy at law, was an abuse of legal process.

(2) In the face of the imperative language of the section,⁴ appellee's contention, that the act is not applicable because what was sought to be enjoined was action in breach of a contract embodied in the Cheney Award, is wholly untenable. The same contention has been rejected in case after case holding that the statute requires a contrary ruling.

(3) Nor may appellee find better support for the injunction in its claim that the purpose of the strike and its effect would be to do violence to statutory procedures embodied in the statute for a disposition of controversies by the Railroad Adjustment Board. For, as has been held time and again, the purpose of the strike, whether it is or is not illegal, is not a limitation upon the prohibitions of the statute. Cf. *Wilson & Co. v. Birl*, 3 Cir., 105 F. 2d 948, and *East Texas Motor Freight Lines v. International Broth. of Teamsters*, 5 Cir., 163 F. 2d 10, where this court held that such a contention was an attempt to enlarge Federal Court jurisdiction as limited by the act. Cf. also *Milk Wagon Drivers' Union, etc. v. Lake Valley Farm Products*, 31 U. S. 91, 61 S. Ct. 122, 85 L. Ed. 63, and 43 C. J. S., Injunctions, § 147, p. 748 and 29 A. L. R. 2d 360.

(4) In this view it is not necessary for us to determine whether, as contended by appellees, the strike, if called, would be violative of the Railway Labor Act, upon the theory either that it would violate the contract providing for the Cheney Award, or that it would violate the spirit and purpose of the Labor Act to conduct a strike while the issue

⁴ "No court of the United States shall have jurisdiction to issue any restraining order or temporary or permanent injunction in any case involving or growing out of any labor dispute to prohibit any person or persons participating or interested in such dispute (as these terms are herein defined) from doing, whether singly or in concert, any of the following acts: (a) Ceasing or refusing to perform any work or to remain in any relation of employment; (b) Aiding any persons involved in any labor dispute; (c) Giving publicity of any labor dispute; (d) Assembling to promote their interests; (e) Advising as to any of the acts heretofore specified; and (f) Agreeing with others to do or not to do any of the acts heretofore specified and (g) Causing or inducing without fraud or violence the acts heretofore specified, regardless of any such undertaking or promise as is described in Sec. 103. 29 U.S.C.A. § 104.

which brought it about was pending before the Adjustment Board with jurisdiction to decide it. This is so because the fundamental weakness of appellees' position is that there is no express provision in the Labor Act in any way limiting the scope and operation of the prohibitions of the LaGuardia Act, and the claim of implied repeal because of a necessary conflict between the two acts is not borne out by a consideration of the language of the two acts either apart from or in connection with their legislative history.

It is true that the Railway Labor Act does contemplate that every reasonable effort will be made to maintain agreements and to avoid interruption to commerce, and that it contemplates that disputes be considered, and, if possible, decided expeditiously by negotiation and that if disputes over grievances are not adjusted on the property, they may be referred by both or either of the parties to the Adjustment Board. It is equally true, however, that none of the sections mandatorily provide that disputes must be submitted to the board rather than being handled by the voluntary methods provided for in the same act.

If, as appellee contends, Congress had, shortly after the passage of the Norris-LaGuardia Act, intended to curtail its provisions, limiting the equity jurisdiction of the courts in labor disputes so as to subject strike action to injunction, it is inconceivable, we think, that it would not have expressly so provided. Indeed, in *General Committee of Adjustment, etc. v. Missouri-Kansas-Texas R. Co.*, 320 U. S. 323, 64 S. Ct. 146, 88 L. Ed. 76, the Supreme Court expressly held that the Mediation Board's determination of such a controversy was not justiciable. In the light of that decision, appellee is under a burden too heavy to be borne when it seeks to justify the judicial remedy sought and obtained here by invoking a jurisdiction which the Norris-LaGuardia Act expressly withdraws from the Federal Courts.

In short, all that is for decision on this appeal is whether the Railway Labor Act has expressly or impliedly repealed the provisions of the LaGuardia Act, denying jurisdiction to courts to enjoin strikes or work stoppages. Unless, therefore, it can be found that there has been such repeal, it is wholly unnecessary to determine whether, as appellee claims, the adjustment board has jurisdiction over the dispute or, as appellants claim, it does not have. Equally im-

material is the question whether the issue before the Adjustment Board is the same as that involved in the present case.

(5) Further, appellee's contention, which prevailed with the district judge below and which it presses here, that the suit falls within the language of the LaGuardia Act making an exception to the grant of an injunction in situations where unlawful acts have been threatened and will be committed unless restrained, is wholly untenable. It is plain from the language and the context that the words "unlawful acts" mean violence, breaches of the peace, criminal acts, etc., and that such terms do not include, they do not constitute a general reference to, anything that may be considered illegal but apply specifically to the acts of violence which authority is calculated to control. *Wilson & Co. v. Birl and Carter v. Herrin Motor Freight Lines, supra.* Cf. 43 C. J. S., Injunctions, § 138, p. 702 and cases cited.

The complaint did not allege that any such violence was threatened or feared, indeed it was carefully framed with the purpose and intent, if possible, to plead a case not within but without the Norris-LaGuardia Act. The statement of the district judge in Finding 33, with reference to the degree of damage depending on the destruction and violence of the strike, and in Finding 34, with reference to the carrier's being threatened with unlawful acts by the defendants which would result in damage to its property, did not constitute findings that physical violence had been threatened and would be committed, and, if they were intended to be such, they are without any support either in the pleadings or in the evidence. Neither was there allegation or supporting proof that police officers were unable or unwilling to furnish adequate protection.

In view of these conclusions, it is unnecessary for us to consider the points made by appellants that the carrier's own conduct in failing (1) to sincerely negotiate, (2) to apply for mediation, and (3) after mediation had begun to proceed with it, and (4) to exhaust its remedies before the Adjustment Board before resorting to suit, was such as to preclude it, under Section 108 of the Act, from seeking an injunction.

Finally, because of our expressed views that this case is one arising under the Norris-LaGuardia Act and the dis-

strict court was without jurisdiction to proceed in it, we do not reach the last question dealt with in appellants' brief, whether the fault in respect of the Cheney Award was the carrier's rather than the employees'.

(6) Appellee concedes that the basic and principal question on this appeal is whether or not the Norris-LaGuardia Act prohibits the district court in this case from taking jurisdiction and granting the pendente lite relief prayed. Conceding, too, that this is a case of first impression in any United States Court of Appeals, it urges upon us that the nature of the relief asked differentiates this case from all others and takes it out of the provisions of the Norris-LaGuardia Act, limiting the jurisdiction of the district court and directing its exercise. In emphasis of this argument, the appellee insists that it did not seek to have the dispute in question settled by the district court, that it sought merely to maintain the status quo pending the decision of the question by the Adjustment Board.

Assuming that this is a correct statement of its pleadings, and treating its argument as directed to the fact that the injunctive action granted was limited, we think it plain that this makes no difference. The decisive, the fundamental questions here are, was this a labor dispute and did the suit seek to prevent by injunction what the act denies the court the power to prevent, and the answers to the questions must be in the affirmative.

The judgment is, therefore, reversed, and the cause is remanded with directions to dismiss the suit for want of jurisdiction.

BROWN, Circuit Judge (dissenting).

The Railroad, by complaint,¹ sought and the court granted

¹ The majority opinion states that the suit was for "(2) a judgment declaring the award final and binding and not subject to modification and change: * * *." With deference I do not so construe the record. In paragraph 30 of the complaint, the injunction sought is carefully restricted to "pending a determination of this controversy by the National Railroad Adjustment Board" and in the Prayer, that an injunction be issued restraining Brotherhood from "endeavoring to negotiate or * * * demanding a rule * * * prescribing extra compensation * * * for coupling and uncoupling air, steam or signal hose; * * * from calling a strike, work stoppage * * * directly or indirectly * * * because of * * * any feature of the controversy * * * described which has been referred to the National Railroad Adjustment Board * * * from en-

an injunction² against the threatened, imminent strike by the Brotherhood pending the determination by the Railway Adjustment Board of the question submitted to it by the Railway of whether the Cheney Award decided "once and for all" the question of whose duty was the job of coupling and uncoupling steam and air hose, as claimed by the Railroad, or, as claimed by Brotherhood, was temporary in nature and open for negotiation.³ No declaratory relief or interpretation of the Cheney Award was sought or obtained.

deavoring to negotiate a cancellation, change, modification or revision of the Award of Referee George Cheney * * * until the consideration of this controversy by the machinery of the National Railroad Adjustment Board has been exhausted in accordance with the provisions of the Railway Labor Act * * *." The Brotherhood's brief before us described the complaint and Prayer, (page 2). "It prayed for temporary restraining order, temporary injunction, and permanent injunction, enjoining a threatened strike because of attempts by the Brotherhood to re-negotiate for pay for coupling."

¹ The Decree carefully recites the purpose to be: "in order to preserve the status quo of the controversy now before the National Railroad Adjustment Board, * * *:

"Pending further order * * * and * * * a final hearing * * * the [Brotherhood] and others * * * are * * * enjoined * * * from threatening to or from calling a strike, work stoppage, or picketing * * * or from using any similar device * * * against the * * * Railway Company, and from striking, stoppage of work, picketing * * * in an effort to or designed or intended:

"A. To compel [Railroad] to agree with [Brotherhood] to a cancellation, modification, change or revision of the * * * Cheney [Award] * * *: or

"B. To compel the [Railroad] to agree to or to consummate a rule * * * inconsistent with the Cheney Award * * *: or

"C. To compel [Railroad] to agree to or to consummate a contract * * * prescribing extra compensation * * * for uncoupling air, steam * * * hose * * * inconsistent with the * * * Cheney Award.

"This order is not to be construed as effecting any action of the [Brotherhood] in any particular, except as actions may involve the controversy now before the National Railroad Adjustment Board; and is also not to be construed as inhibiting a voluntary settlement of this dispute."

² The Cheney Award, seeking to resolve the provocative controversy raging since 1887 with the advent of the Westinghouse Air Brake, grew out of the impasse in the 1950 Railway-Brotherhood negotiations with its threat of a nation-wide strike of all Class I Railroads with the devastating consequences to the nation's economy and security. The Mediation Board, under the Railway Labor Act, attempted unsuccessfully to produce agreement or persuade the parties to arbitrate. Under the Act, the President of the United States appointed an Emergency Board whose findings the Brotherhoods declined to accept, requesting instead that

At the outset, I am in complete agreement that, if the Norris-LaGuardia Act, 29 U. S. C. A. §§ 101-115, applies, the Railroad has not met its terms and the injunction, even though limited, ought not to have been granted. Similarly, I concur that the mere fact that the strike involved some violation of law or is in breach of contract does not remove the controversy from the sweeping prohibition of that Act. *Wilson & Co. v. Birl*, 3 Cir., 105 F. 2d 948; *East Texas Motor Freight Lines v. International Broth. of Teamsters*, 5 Cir., 163 F. 2d 10; *Carter v. Herrin Motor Freight Lines*, 5 Cir., 131 F. 2d 557; *Milk Wagon Drivers' Union, etc. v. Lake Valley Farm Products*, 311 U. S. 91, 61 S. Ct. 122, 85 L. Ed. 63.

But here injunction was sought and granted not because the contract forbade a strike, or to negotiate with the pressure of threatened strike was a violation of the contract, but rather because the contention and countercontention of the effect and significance of the contract (Cheney Award) was itself a "dispute[s] between an employee or group of employees and a carrier * * * growing out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions * * *", 45

the President take control of the Railroads. In December 1950, after extended Presidentially sponsored conferences, agreement was reached on all but a limited number of issues, then specified, including coupling of steam-air hoses. On May 25, 1951, all issues, except two were settled, one being coupling air hoses, and on that date the parties agreed to submit the issues to a Presidentially appointed Referee, (George Cheney was named) "the decision of the Referee shall be final and binding on the parties, and shall become effective * * *."

On November 28, 1953, the Brotherhood, under 45 U.S.C.A. § 156 made demand for contract changes, including pay increases for air-steam coupling. Threatened with strike over the issue and mediation failing, the Railroad filed in the Georgia State Court a suit for declaratory judgment under the Cheney Award declaring it final and binding and seeking injunction to effectuate it. The Railroad asserted below that Brotherhood contended, and the Supreme Court of Georgia agreed, that the State "Court is without jurisdiction * * * and * * * the matters involved are within the jurisdiction of the National Railroad Adjustment Board exclusively under Title 45, § 153 [First] (i) * * *." *Central of Georgia Ry. Co. v. Brotherhood of Railroad Trainmen*, 211 Ga. 263, 85 S.E. 2d 413, 414. Immediately, the Railroad submitted the controversy to the Railroad Adjustment Board. Then followed, in January and February 1955, the renewed demands for negotiation by the Brotherhood, the strike notices, efforts at mediation and submission to arbitration. The Railroad claimed, and the trial court found, that the Brotherhood was unwilling to allow the question of the extent, nature and effectiveness of the Cheney Award to be decided by the Railroad Adjustment Board and, a system-wide strike being imminent, an injunction was issued to permit it to be determined by the Adjustment Board.

U. S. C. A. § 153, First (i), the determination of which is committed exclusively, where voluntary negotiations fail as they did here, to the National Railroad Adjustment Board. And if the controversy was one for the Railroad Adjustment Board, then the refusal of the Brotherhood, and its members, to allow the statutory course to be followed, and its interference in that process by a system-wide strike designed to force the issue on the very controversy before that tribunal, became, not a mere violation of a general law (unavailable as an escape from Norris-LaGuardia), but an absolute violation of the very law designed to regulate and control labor controversies of the kind involved.

Ignoring this latter point with an undue preoccupation with artificial concepts of partial repeal or implied repeal of Norris-LaGuardia is, I think, the defect of the majority opinion. The question is not; which repeals the other, and to what extent? It is rather the problem of frequent necessity in adjudication where two or more statutes, each bespeaking its own major policy, are accommodated and adapted to assure that the total policy reflected by all is effectuated.

This approach, substantiated by abundant authorities, has special merit here. Both statutes are the offspring of a common era, enacted (1932 and 1934) near the same time, with each intended as a major, deliberate and far-reaching change in national labor policy. Neither was intended as the repeal of the other. The enactment of one was not the repudiation of the policy of the other. They exist side by side and where, through the years, they have come into apparent collision, the courts, unfettered by awkward concepts of repeal, have found the way by which now one, now the other, has been found dominant and controlling.

In this light, Federal Courts have never been shackled by Norris-LaGuardia in giving life and force to the mandates of the Railway Labor Act. *Virginian R. Co. v. System Federation*; *Graham v. Brotherhood of Locomotive Fire-*

* 300 U.S. 515, 57 S.Ct. 592, 607, 81 L.Ed. 789; injunction issued to require Railroad to bargain with Union certified by Mediation Board and not to bargain with another; notwithstanding that this controversy met many of the Norris-LaGuardia definitions of a "labor dispute" and the decree issued was of a type forbidden by Section 104, the Supreme Court rejected it as a bar: "It suffices to say that the Norris-LaGuardia Act can affect the present decree only so far as its provisions are found

*men and Enginemen.*⁵

Of course, the Railway Labor Act is not a voluntary, free-will mechanism; it is one imposing substantial obligations on the parties, railway management and labor alike; and a court, by injunction, can compel the parties to carry out and effectuate its aims, *Texas and N. O. R. Co. v. Brotherhood of Ry. & S. S. Clerks*, 281 U. S. 548, 50 S. Ct. 427, 74 L. Ed. 1034; *Virginian R. Co. v. System Federation*, *supra*; *Order of Ry. Conductors of America v. Pitney*;⁶ *Elgin, Jol-*

not to conflict with those of section 2, Ninth, of the Railway Labor Act (45 U.S.C.A. § 152, subd. 9), authorizing the relief which has been granted. Such provisions cannot be rendered nugatory by the earlier and more general provisions of the Norris-LaGuardia Act." Of course, Section 2, Ninth, 45 U.S.C.A. § 152; Ninth, does not, as such, authorize injunctions.

* 338 U.S. 232, 240, 70 S.Ct. 14, 17, 94 L.Ed. 22; injunction affirmed against a union forbidding unlawful discrimination toward non-members. "The respondent [Brotherhood] has strenuously urged throughout that in view of the provisions of the Norris-LaGuardia Act * * * the District Court was without jurisdiction to grant relief by injunction. * * * But this is not a question of first impression. In *Virginian R. Co. v. System Federation*, 300 U.S. 515, 57 S.Ct. 592, 81 L.Ed. 789, we held that the Norris-LaGuardia Act did not deprive federal courts of jurisdiction to compel compliance with positive mandates of the Railway Labor Act, 45 U.S.C.A. § 151 et seq., * * * enacted for the benefit and protection within a particular field, of the same groups whose rights are preserved by the Norris-LaGuardia Act. * * * We adhere to the views expressed in the *Virginian* case. But the Brotherhood urges that the controversy in the *Virginian* case did not involve a labor dispute within the meaning of the Norris-LaGuardia Act and that accordingly that case must be distinguished on its facts. * * * We do not accept the Brotherhood's invitation to narrow the meaning of that term. * * * Moreover, if this Court had considered that a labor dispute was not involved, it would hardly have taken the trouble, in the *Virginian* case, to refute contentions based upon parts of the Act, which as a whole extends its protection solely to such disputes. * * * If, in spite of the *Virginian*, *Steele* [*Steele v. Louisville & Nashville R. Co.*, 323 U.S. 192, 65 S.Ct. 226, 89 L.Ed. 173], and *Tunstall* [*Tunstall v. Brotherhood of Locomotives*, etc., 323 U.S. 210, 65 S.Ct. 235, 89 L.Ed. 187] cases * * *, there remains any illusion that under the Norris-LaGuardia Act the federal courts are powerless to enforce these rights, we dispel it now. * * *

This completely dissipates, I think, the force of the argument of the majority: "If, as appellee contends, Congress had, shortly after the passage of the Norris-LaGuardia Act, intended to curtail its provisions, limiting the equity jurisdiction of the courts in labor disputes so as to subject strike action to injunction, it is inconceivable, we think, that it would not have expressly so provided, * * *." Of course, its emphasis on the prohibition of strikes, as such, ignores, as Justice Jackson pointed out, the wide character of controversies protected and remedies forbidden.

* 326 U.S. 561, 66 S.Ct. 322, 325, 90 L.Ed. 318; dispute over assignment of work on certain trains; one union contending that by virtue of a con-

iet & E. Ry. Co. v. Burley;⁷ *Brotherhood of R. R. Trainmen v. Howard*,⁸ including the resolution of disputes, grievances, and controversies through the administrative machinery of the Adjustment Board set up under the Act.⁹

tract, not negotiated pursuant to Section 6, 45 U.S.C.A. § 156, it was unlawfully given to another. Court recognizes that injunction can issue to compel compliance with the Act, including Section 6, but since question depends on the interpretation of the disputed contract, this was a matter for determination by the Adjustment Board. "Under these circumstances the court should exercise equitable discretion to give that agency the first opportunity to pass on the issue. Certainly the extraordinary relief of an injunction should be withheld, at least, until then. * * * Only after the Adjustment Board acts, but not until then, can it plainly appear that such relief is necessary to insure compliance with the statute. * * *

⁷ 325 U.S. 711, 720, 721, 65 S.Ct. 1282, 1288, 89 L.Ed. 1886, 1893; the court rejects the contention that an Adjustment Board award amounts to nothing more than an advisory opinion. "The contention, founded upon language of the opinion in *Moore v. Illinois Central R. Co.*, 312 U.S. 630, 61 S.Ct. 754, 85 L.Ed. 1089, regards the Act's entire scheme for the settlement of grievances as wholly conciliatory in character, involving no element of legal effectiveness, with the consequence that the parties are entirely free to accept or ignore the Board's decision.

"At the outset we put aside this broadest contention, as inconsistent with the Act's terms, purposes and legislative history. The Moore case involved no question concerning the validity or the legal effectiveness of an award when rendered. Nor did it purport to determine that the Act creates no legal obligations through an award or otherwise. * * * both prior and later decisions here are wholly inconsistent with such a view of its effects. * * * 12 * * *." Footnote 12 then states: "Thus, one of the statute's primary commands, judicially enforceable, is found in the repeated declaration of a duty upon all parties to a dispute to negotiate for its settlement. * * * [Citing cases.] This duty is not merely perfunctory. Good faith exhaustion of the possibility of agreement is required to fulfill it. * * * *Brotherhood of Railroad Trainmen v. Toledo, P. & W. R. R.*, 321 U.S. 50, 56, 64 S.Ct. 413, 416, 88 L.Ed. 534 [538] * * *. At successive stages of the statutory procedure other duties are imposed. Cf. §§ 5, First (b), 6, 10."

⁸ 343 U.S. 768, 72 S.Ct. 1022, 1026, 96 L.Ed. 1283; "In fashioning its decree the District Court is left free to consider what provisions are necessary to afford these employees full protection from future discriminatory practices of the Brotherhood. However, in drawing its decree, the District Court must bear in mind that disputed questions of reclassification of the craft of 'train porters' are committed by the Railway Labor Act to the National Mediation Board."

⁹ *Rolfes v. Dwellingham*, 8 Cir., 198 F.2d 591, 593: injunction issued in case involving allocation of work between competing classification of employees, to remain in force pending determination by the National Railway Adjustment Board of the question of jurisdiction involved or for a reasonable time for the waiters to invoke the jurisdiction of the Board. Equitable relief was granted "in aid of the administrative machinery provided for the adjustment of disputes in the Railway Labor Act", * * * and "limited its injunction strictly to the purpose of

The national Railway Labor Act is not for labor alone. To be sure it benefits labor greatly, but its underlying purpose is to assure industrial peace in an important phase of our national economy. It is a double-track system; the trains run both ways simultaneously, and when equity can compel a Railroad to comply, *Texas & N. O. R. Co. v. Brotherhood of Ry. & S. S. Clerks*; *Virginian R. Co. v. System Federation*, *supra*, so, too, may it compel obedience by unions, *Brotherhood of R. R. Trainmen v. Howard*; *Graham v. Brotherhood of Locomotive Firemen and Enginemen*, *supra*.

affording opportunity for the administrative Board to function as contemplated by the Act. * * * The Railway Labor Act contemplates that the Boards which it sets up shall function through process of mediation and interpretation of disputed contracts to minimize conflicts and interruptions of commerce. * * * When the action was found to be wrongful and violative of the provisions of the Act, it was the duty of the court, and it properly acted, to restore the plaintiffs to their position before the wrongful action was taken against them." Court expressly states that *Graham*, *Virginian*, *Steele*, and *Tunstall* are "equally conclusive that the Norris-LaGuardia Act does not deprive the federal courts of power to issue such an injunction * * * in aid of the administrative Board and to preserve the right of the waiters-in-charge to resort to the administrative procedure provided by * * * the * * * Act."

Missouri-Kansas-Texas R. Co. v. Brotherhood of Railway & S. S. Clerks, 7 Cir., 188 F.2d 302: institution of suits by the Brotherhood to enforce awards on allocation of work between competing classifications enjoined, as awards illegal for want of notice.

Missouri-Kansas-Texas R. Co. v. National Railroad Adjustment Board, D.C. N.D. Ill., 128 F.Supp. 331: injunction issued against Brotherhood and Board to forbid efforts to enforce conflicting, contradictory awards made without adequate notice pending a determination of all of the cases consolidated by further award of the Board.

Brotherhood of R. R. Trainmen v. Templeton, 8 Cir., 181 F.2d 527, certiorari denied 340 U.S. 823, 71 S.Ct. 57, 95 L.Ed. 605, 643: injunction issued against Brotherhood to forbid enforcement of and practices under awards made without adequate notice on allocation of work between competing classifications.

Railway Employees' Cooperative Association v. Atlanta, B. & C. R. Co., D.C. Ga., 22 F.Supp. 510: injunction issued against Railroad prohibiting interference with union selection of bargaining representative pending decision by Railway Labor Board machinery.

Cf. Baltimore & O. R. Co. v. Chicago River & I. R. Co., 7 Cir., 170 F.2d 654, certiorari denied *Brotherhood of R. Trainmen v. Baltimore & O. R. Co.*, 336 U.S. 944, 69 S.Ct. 811, 93 L.Ed. 1101; *Missouri-Kansas-Texas R. Co. v. Randolph*, 8 Cir., 164 F.2d 4.

Union Premier Food Stores v. Retail Food C. & M. Union, 3 Cir., 98 F.2d 821, reversed as moot 308 U.S. 526, 60 S.Ct. 376, 84 L.Ed. 445, presented substantially the same problem under the National Labor Relations Act; injunction was issued against a strike where, in a representation controversy, the employer was neutral and the matter was then awaiting decision by the National Labor Relations Board.

It seems equally plain that a genuine difference over the meaning and effect of a contract is a grievance which must be submitted to and decided by the Railway Adjustment Board, *Slocum v. Delaware, L. & W. R. Co.*; ¹⁰ *Order of Ry. Conductors of America v. Southern Ry. Co.*, 339 U. S. 255, 70 S. Ct. 585, 94 L. Ed. 811; once that procedure has been invoked by one of the parties.¹¹

The legislative scheme for these matters to be first determined by the expertise of the Adjustment Board is completely frustrated if resort by either party to court or any other activity which prevents the free functioning of this machinery is permitted. Requiring the submission of these grievances to the Adjustment Board contemplates the exercise of deliberative judgment in the light of its special industrial experience.

No matter how informal the proceedings might be, or how strange to lawyers and judges the mechanism may function, the whole spirit is that the result is to be an informed judgment. That means that the adjustment machinery must be free to consider the controversy in the light of its inherent merits, free from extrinsic pressures. This deliberation, this exercise of judgment, cannot take place if either of the parties can marshal and deploy pressures and forces, economic or otherwise, which will interfere with or interrupt or,

¹⁰ 339 U.S. 239, 70 S.Ct. 577, 579, 94 L.Ed. 795; referring to the Act's purpose to avoid interruption to Commerce, 45 U.S.C.A. § 151a, Court stated: " * * * This purpose extends both to disputes concerning the making of collective agreements and to grievances arising under existing agreements. [Cites *Elgin* case, supra.] The plan of the Act is to provide administrative methods for settling disputes before they reach acute stages that might be provocative of strikes. Carriers are therefore required to negotiate with bargaining representatives of the employees. [Cites *Virginian*, supra.] The Act also sets up machinery for conciliation, mediation, arbitration and adjustment of disputes, to be invoked if negotiations fail. * * * It was to prevent such friction that the 1926 Act provided for creation of various Adjustment Boards by voluntary agreements between carriers and workers. * * * But this voluntary machinery proved unsatisfactory, and in 1934 Congress, with the support of both unions and railroads, passed an amendment which directly created a national Adjustment Board * * *. The Act thus represents a considered effort on the part of Congress to provide effective and desirable administrative remedies for adjustment of railroad-employee disputes growing out of the interpretation of existing agreements. * * *"

¹¹ *Elgin, Joliet & E. Ry. Co. v. Burley*, 325 U.S. 711, 727, 65 S.Ct. 1282, 1292, 89 L.Ed. 1886, 1896, "Each party to the dispute may submit it for decision, whether or not the other is willing * * *"

more likely make altogether unnecessary or futile the operation of this machine.

A strike, or the threat of a strike, is but one kind of interference with the orderly operation of this mandatory system. If, merely because the union might ultimately strike after a final award by Adjustment Board or decision of Mediation Board, a strike, or threat of strike, can be used initially to thwart consideration or determination it would make the whole procedure futile. Surely, in the establishment of this system, Congress expected that machinery constructed for the purpose of eliminating strikes should have adequate means to control or regulate the force or threat of such action until the statutory device should have had an opportunity to function.

This does not impinge upon the basic policies reflected in the Norris-LaGuardia Act or the elemental rights which seem to inhere in the right to strike. A court of equity is not being used, as was so often formerly the case, to upset the balance or imbalance of competing economic forces in order to give one party, rather than the other, weight or advantage in a private controversy between labor and management. Here a court of equity exerts its power to fulfill the predominant public interest in having provocative (but as here otherwise relatively insignificant) controversies determined by the public agency established by law for that very purpose. In this way the equity court, not ranging on the side of one against the other, adheres strictly to the position of impartial enforcement of law—an imposition on each and both of the duty to use freely, and in good faith exhaust, this statutory machinery for the determination of these controversies.

A real, genuine, spirited disagreement exists as to the meaning, application and effect of the Cheney Award—whether, as claimed by Railroad, it solved the air coupling problem forever, or, as contended by Brotherhood, foreclosed it only during the life of the 1950 contract of which the Cheney arbitration was a part, and, whether, in either case, it would prohibit efforts by the Brotherhood to secure changes in contracts concerning the future. If the Railroad is right, the Brotherhood should be held to the bargain made inducing the Cheney arbitration and award; if the

Railroad is wrong, the Brotherhood should be free to negotiate with all the pressures and forces it can marshal.

That controversy is for determination by the machinery of the national Railway Labor Act. The decree permits the machine to work. It was right, in my judgment.

I therefore respectfully dissent.

APPENDIX III.

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND INJUNCTION.

This cause coming on to be heard, and the Court having considered the verified Amended Complaint heretofore filed in this case, the defendants' answer and motion to dismiss, and the plaintiffs' motions with affidavits attached, does find the facts and conclusions as to the law as follows:

Findings of Fact.

1. Plaintiffs are corporations organized and existing under and by virtue of the laws of various of the States of the United States. Plaintiffs are common carriers by railroad and are subject to the Railway Labor Act, 45 U. S. C. § 151 *et seq.* Plaintiff, The Chicago River and Indiana Railroad Company (hereinafter called the "River Road") is a corporation organized and existing under and by virtue of the laws of the State of Illinois and is a common carrier by rail and operates a line of railroad serving the Union stock-yards, Chicago, Illinois, and serves at Chicago, Illinois the lines of railroad of the other plaintiffs.

2. The defendant Brotherhood of Railroad Trainmen is a voluntary organization and is a labor organization within the meaning of the Railway Labor Act, which is, and at all times material hereto has been the recognized and acting collective bargaining agent for all of the River Road's employees who are classified as yard foremen and yard helpers (including switch tenders). The Brotherhood of Railroad Trainmen consists of a Grand Lodge and many subordinate Local Lodges, and has its principal business office in Cleveland, Ohio.

3. The defendant Brotherhood of Railroad Trainmen, Lodge No. 964, is a local lodge of the Brotherhood of Railroad Trainmen with headquarters at Chicago, Illinois.

4. Defendants, Felix E. Kazmer, Michael V. Smalley, and George C. Hofer are officers of Lodge No. 964, and defendant W. M. Dolan is vice president of the Brotherhood of Railroad Trainmen. They fairly and adequately represent their organizations and the members thereof.

5. In the conduct of its business the River Road employs a class of employees, among others, generally referred to as yard foremen and yard helpers (including switch tenders) whose duties, generally stated, are the handling and controlling of the movement of railroad cars and trains over the rails of plaintiff. Plaintiff cannot operate its railroad without the performance of these duties. These employees are all members of or represented by the Brotherhood of Railroad Trainmen and Lodge No. 964, and the River Road has recognized the Brotherhood of Railroad Trainmen as the collective bargaining agent for these said employees.

6. For many years prior to the claims and grievances hereinafter referred to and continuing up to the present time, rules and working conditions pertaining to the classes of employees known as yard foremen and yard helpers (including switch tenders) were determined by contracts between plaintiff and the Brotherhood of Railroad Trainmen entered into from time to time.

7. The River Road and the defendants have at all material times in question, and for many years prior thereto handled claims and grievances concerning individual employees of the classes mentioned in accordance with the various agreements and in accordance with the provisions of the Railway Labor Act. Among the claims and grievances presented to this plaintiff for disposition were nineteen claims for additional compensation, one claim for reinstatement of a discharged employee, and one claim for reinstatement of an employee to the position of yard foreman. These grievances, disputes and claims were handled on the property of this plaintiff in accordance with the various agreements between plaintiff and defendants, and in accordance with the provisions of the Railway Labor Act. All twenty-one claims above referred to were submitted to

the superintendent of the River Road, an officer designated to handle such cases, who considered and ultimately denied each of the twenty-one claims. Each of the said twenty-one claims was appealed to the General Manager of the River Road, who was designated as the highest officer to handle such claims under the Railway Labor Act. The said twenty-one claims were heard and considered at various times and were denied by the said officer on various dates between December 20, 1949 and September 4, 1953.

8. Defendants heretofore called a strike for six A. M. Monday, June 7, 1954, in order to coerce the River Road into meeting the demands contained in the said twenty-one grievances and claims. The said strike was postponed when the National Mediation Board proffered its services. The efforts of the National Mediation Board to mediate these disputes failed, whereupon the National Mediation Board withdrew on July 15, 1954. In the meantime the River Road submitted, pursuant to the terms of the Railway Labor Act, each of the said claims to the First Division of the National Railroad Adjustment Board, which has not yet rendered a decision on any of them.

9. The defendants, and each of them, have threatened an immediate strike of all employees of the classes of yard foremen and yard helpers (including switch tenders).

10. The said strike threat, if carried into effect, would paralyze the River Road's operation and prevent the transportation of persons and property over it. The purpose of said strike is to force this plaintiff, by the use of self-help by defendants and the employees represented by them, to settle grievances or claims for compensation without submitting such disputes or grievances to the National Railroad Adjustment Board.

11. Uninterrupted services of the River Road's yard foremen and yard helpers are essential to the operation of its railroad. A stoppage of operations would cause this plaintiff thousands of dollars damages daily and would require it to lay off a proximately 1100 employees who would lose an aggregate amount of money in excess of Twelve Thousand Dollars (\$12,000) wages daily for each day of such strike or stoppage. This plaintiff will be compelled to embargo shipments, including perishable foodstuffs, into and out of the stock yards in Chicago, which will immedi-

ately cause irreparable damage to the 600 industries and 27 railroads served by it. These 27 railroads, which are the other plaintiffs herein, will incur thousands of dollars of damages for each day the strike is in effect. The adverse effects upon business and the public generally will cause hundreds of thousands of dollars damage each day the strike is in effect.

12. The River Road has attempted to settle with defendants the 21 grievances and claims which underlie the threatened strike or work stoppage through negotiation and through the mediation efforts of the National Mediation Board. Defendants refused to submit the grievances to the National Railroad Adjustment Board and refused to join with the carrier in its submission.

13. The amount in controversy exceeds the sum of Three Thousand Dollars (\$3,000), exclusive of interest and costs.

Conclusions of Law.

Under the foregoing findings of fact, the Court concludes that:

1. The cause of action here asserted by plaintiffs is one arising under the laws of the United States regulating commerce; and the Court has jurisdiction of the parties and subject matter of said cause under 28 U. S. C. 1331 and 1337.

2. The Complaint herewith states a claim upon which relief should be granted.

3. Plaintiffs, defendants and plaintiffs' employees represented by defendants are subject to the Railway Labor Act, the general purposes of which are, among other things, to avoid any interruption to commerce or to the operation of any carrier engaged therein and to provide for the prompt and ordinary settlement of all disputes growing out of grievances or out of the interpretation or application of agreements covering rates of pay, rules or working conditions.

Congress has established compulsory administrative machinery under the Railway Labor Act whereby parties to a collective bargaining agreement are required to submit such controversies as are here involved to the National

Railroad Adjustment Board or to a proper court or board without resorting to self-help.

4. It is the public policy of the United States stated in Section 2, First, of the Railway Labor Act, that it shall be the duty of all carriers, their officers, agents and employees, to exert every reasonable effort to make and maintain agreements concerning rates of pay, rules and working conditions, and to settle all disputes whether arising out of the application of such agreements or otherwise, in order to avoid any interruption to commerce or to the operation of any carrier growing out of any dispute between the carrier and the employees thereof. An interruption of commerce or an interruption of the operations of the plaintiffs by strike or stoppage, called, led or participated in by defendants pending final and ultimate decision by the National Railroad Adjustment Board would constitute a violation of said public policy. The purpose of the strike threatened by defendants is to force the River Road, by the use of self-help by defendants and the employees represented by them, to settle grievances or claims for compensation without submitting such grievances or claims to the National Railroad Adjustment Board, all of which is contrary to law.

5. Defendants and each of them by their threatened actions are in violation of the Railway Labor Act. The defendants and each of them have failed to exhaust remedies available to them under the Railway Labor Act for the handling and final disposition of the above claims.

6. This cause does not involve a labor dispute within the meaning of the Norris-LaGuardia Act (29 U. S. C. 101 *et seq.*) and this Court has not been deprived of jurisdiction to grant the relief requested herein.

7. Even if this cause did involve a labor dispute within the meaning of the Norris-LaGuardia Act, this Court has jurisdiction to enjoin the threatened acts for the purpose of enforcing the mandatory provisions of the Railway Labor Act.

8. Plaintiffs have no adequate remedies at law and will suffer irreparable harm and injury unless awarded injunctive relief. The equity powers of this Court are adequate to afford the relief sought herein and should be exercised in these circumstances.

9. A permanent injunction should be issued enjoining defendants, their agents, servants, and all acting by, through, or for them, or on their behalf, from conducting any strike, stoppage, or other active economic coercion to force or coerce the River Road into settling the claims, grievances and disputes herein referred to which have been filed with the National Railroad Adjustment Board.

ENTER:

WIN G. KNOCH,

United States District Judge.

March 15, 1956.

IN THE DISTRICT COURT OF THE UNITED STATES

(Caption—54-C-1024)

PERMANENT INJUNCTION.

This matter coming on to be heard, and the Court having considered the verified Amended Complaint heretofore filed in this case, the defendants' answer and motion to dismiss, plaintiffs' motions with affidavits attached, and the arguments of counsel and the entire record herein, and the Court having made findings of fact and conclusions of law,

NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that defendants, members of defendants' organization and its officers, their agents, servants, employees and attorneys, and all persons including all yardmen, yard foremen and switchmen employed by the Chicago River and Indiana Railroad Company on its railroad, and any persons in active concert and participation with them, and all persons acting by, with, through and under them, or by or through their order, be and they are hereby enjoined from, in connection with the grievances now pending in the National Railroad Adjustment Board:

1. Calling, ordering, authorizing, encouraging, inducing, approving, continuing, starting or permitting any strike or collective work stoppage on that plaintiff's railroad.
2. Picketing or bannering any of the premises on which that plaintiff conducts its railroad operations.

3. Interfering with ingress to or egress from said premises.

4. Interfering in any manner with the delivery, loading, unloading, dispatch or movement of any of that plaintiff's rolling stock, engines, cars, equipment or trains or any of the contents thereof.

5. In any manner interfering with or inducing or endeavoring to induce any person employed by that plaintiff from performing his work and duties and from in any manner endeavoring to induce any such employee to desist therefrom.

Nothing herein shall be construed to require an individual employee to render labor or service without his consent, nor shall anything herein be construed to make the quitting of his labor by an individual employee an illegal act.

ENTER:

WIN G. KNOCH,
United States District Judge.

APPENDIX IV.

Brotherhood of Railroad Trainmen v. Chicago River and Indiana Railroad Co., et al., No. 11745, United States Court of Appeals for Seventh Circuit, entered May 17, 1956:

Upon the motion of defendants-appellants that this cause be docketed upon the transcript of record heretofore filed and printed in the above-mentioned cause No. 11474 and upon the additional transcript of record filed in this cause No. 11745, and that it may be considered and decided upon briefs, oral arguments, petition for rehearing and answer to petition for rehearing filed in cause No. 11474, which motion is supported by stipulation signed by both defendants-appellants and plaintiffs-appellees, and it appearing that, following our reversal in case No. 11474 of the district court's order dismissing the above entitled suit and for remandment, said district court proceeded upon remandment and rendered findings of fact, conclusions of law, and

a judgment for injunction in accordance with the views expressed in this court's opinion in No. 11474, and that the defendants-appellants have saved but two of the questions originally raised by the proceedings below, waiving all other questions of fact or law, to wit:

- “(1) Was it the Congressional intent of the National Railway Labor Act to prohibit the threatened strike involved in this case which concededly, if accomplished, would have involved only demands with respect to ‘minor grievances?’”
- (2) If the National Railway Labor Act was intended to prohibit the above-mentioned threatened strike, did it so far repeal the Norris-LaGuardia Act as to authorize or compel the District Court to grant an injunction?”

And it further appearing that all of the parties hereto represent to this court that they have no arguments to present other than those presented in No. 11474, but that defendants-appellants ask this court to reconsider and rescind its former holding, and the court being fully advised on the premises, **IT IS ORDERED, ADJUDGED AND DECREED** that this court refuses to reconsider and rescind its former holding in No. 11474, and hereby adheres to said holding. The court finds that the district court, upon remandment, proceeded in accordance with the order of remandment, and that no error occurred in the proceedings below upon remandment.

Accordingly, **IT IS ORDERED, ADJUDGED AND DECREED** that the judgment of the district court, of March 15, 1956, from which this appeal was taken, be and the same is hereby affirmed.

IT IS FURTHER ORDERED that pursuant to the stipulation of the parties hereto, there shall be filed in this appeal No. 11745, in addition to the transcript of record now on file therein, the transcript of record heretofore filed in case No. 11474.

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JOHN T. FEY, Clerk

IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1956.

No. 313

BROTHERHOOD OF RAILROAD TRAINMEN,
etc., et al.,

Petitioners,

vs.

CHICAGO RIVER AND INDIANA RAILROAD COM-
PANY, et al.,

Respondents.

BRIEF FOR PETITIONERS.

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CHICAGO RIVER AND INDIANA RAILROAD COM-
PANY, et al.,

Respondents.

BRIEF FOR PETITIONERS

REFERENCE TO OFFICIAL AND UNOFFICIAL RE-
PORTS OF THE OPINIONS DELIVERED BY THE
COURTS BELOW.

The first Opinion of the Court of Appeals in this case, rendered on Petitioners' appeal from a judgment dismissing respondents' suit on the merits but continuing in force pending appeal of a temporary injunction, is reported in 229 F. 2d at pp. 926-933. This Opinion is reprinted in full as Appendix I to this brief, pp. 31 to 39.

The final Opinion of the Court of Appeals, rendered after final judgment on remandment, is not reported. It is reproduced as Appendix II to this brief, pp. 40 to 41.

The District Court rendered no formal opinion in this case. An informal letter to Counsel, preserved in the record, is reprinted as Appendix V. The District Court's initial judgment of dismissal is reprinted as Appendix VI.

The District Court's final findings, conclusions and judgment, rendered in obedience to the opinion, judgment and mandate of the Court of Appeals, are reprinted as Appendix III at pp. 41 to 47.

The Opinion of the Court of Appeals for the 5th Circuit in the companion case, *Brotherhood of Railroad Trainmen v. Central of Georgia Ry. Co.*, with the dissenting opinion of Brown, J., is reported in 229 F. 2d 901 and is reproduced, with the dissenting opinion of Brown, J., as Appendix IV to this brief, pp. 48 through 62.

STATEMENT OF THE GROUNDS ON WHICH THE JURISDICTION OF THIS COURT IS INVOKED.

The final judgment of which review is sought was entered on May 17, 1956. No petition for rehearing was filed.

In its final memorandum opinion, cited above, Appendix II, *post*, the Court of Appeals referred and adhered to the views expressed in its non-final opinion, reversing and remanding the District Court's first judgment, cited above, Appendix I, *post*.

The first opinion and judgment of the Court of Appeals in this case were rendered on February 6, 1956. Rehearing was denied on March 5, 1956. It will be noted that since the first judgment was one of remandment for further proceedings, it was not final. Although this Court would of course have had technical jurisdiction to review it, the issues were not then ripe for adjudication.

FEDERAL STATUTES WHICH THIS CASE INVOLVES.

This case involves the effect, if any, of the Railway Labor Act upon the Norris-LaGuardia Act with respect to strikes or threats of strikes over past minor grievances and claims.

The pertinent provisions of the Railway Labor Act and the Norris-LaGuardia Act are as follows:

(1) *Railway Labor Act*

Section 1a of the Railway Labor Act (Title 45 U.S.C.A., Section 151a, §2, 44 Stats. 577; §2, 48 Stats. 1186) provides: "The general purposes of the chapter are: (1) To avoid any interruption to commerce or to the operation of any carrier engaged therein; * * * (4) to provide for the prompt and orderly settlement of all disputes concerning rates of pay, rules, or working conditions; (5) to provide for the prompt and orderly settlement of all disputes growing out of grievances or out of the interpretation or application of agreements covering rates of pay, rules or working conditions."

Section 2 First of the Railway Labor Act (Title 45 U. S. C. A., Sec. 152 First) provides: "It shall be the duty of all carriers, their officers, agents and employees to exert every reasonable effort to make and maintain agreements concerning rates of pay, rules and working conditions, and to settle all disputes, whether arising out of the application of such agreements or otherwise, in order to avoid any interruption to commerce or to the operation of any carrier growing out of any dispute between the carrier and the employees thereof."

Section 2, Second, of the Railway Labor Act (Title 45 U. S. C. A., Sec. 152 Second, § 2, 44 Stats. 577, § 2, 48 Stats. 1186, § 1, 62 Stats. 909, 64 Stats. 1238), provides: "All dis-

putes between a carrier or carriers, and its or their employees shall be considered, and, if possible, decided with all expedition, in conference between representatives designated and authorized so to confer, respectively, by the carrier or carriers and by the employees thereof interested in the dispute."

Section 3, First, (i) of the Railway Labor Act (Title 45 U. S. C. A., Sec. 153 First (i) § 2, 44 Stat. 577, § 2, 48 Stat. 1186, § 1, 62 Stat. 909, 64 Stat. 1238) provides: "The disputes between an employee or group of employees and a carrier or carriers growing out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules or working conditions, * * *, shall be handled in the usual manner up to and including the chief operating officer of the carrier designated to handle such disputes; but, failing to reach an adjustment in this manner, the disputes may be referred by petition of the parties or by either party to the appropriate division of the Adjustment Board with a full statement of the facts and all supporting data bearing upon the disputes."

(2) *Norris-LaGuardia Act*

Section 1 "No court of the United States, as defined in Sections 101-115 of this Title, shall have jurisdiction to issue any restraining order or temporary or permanent injunction in a case involving or growing out of a labor dispute, except in a strict conformity with the provisions of such sections; nor shall any such restraining order or temporary or permanent injunction be issued contrary to the public policy in such sections." (Title 29, U. S. C. A. Section 101, Section 1, 47 Stat. 70)

Section 4 "No Court of the United States shall have jurisdiction to issue any restraining order or temporary or

permanent injunction in any case involving or growing out of any labor dispute to prohibit any person or persons participating or interested in such dispute (as these terms are herein defined) from doing, whether singly or in concert, any of the following acts:

“(a) Ceasing or refusing to perform any work or to remain in any relation of employment.” (29 U. S. C. Sec. 104, Sec. 4, 47 Stat. 70).

Section 13 “When used in Sections 101-115 of this Title, and for the purposes of such sections—(a) A case shall be held to involve or to grow out of a labor dispute when the case involves persons who are engaged in the same industry, trade, craft, or occupation; or have direct or indirect interests therein; or who are employees of the same employer; or who are members of the same or an affiliated organization of employers or employees; whether such dispute is (1) between one or more employers or associations of employers and one or more employees or associations of employees; (2) between one or more employers or associations of employers and one or more employers or associations of employers; or (3) between one or more employees or associations of employees and one or more employees or associations of employees; or when the case involves any conflicting or competing interests in a ‘labor dispute’ (as defined in this section) of ‘persons participating or interested’ therein (as defined in this section).” (Title 29 U. S. C. Sec. 113, Sec. 13, 47 Stat. 73).

THE QUESTIONS PRESENTED FOR REVIEW.

The questions presented for review are:

1. DOES THE LABOR RAILWAY ACT PROHIBIT THE STRIKE ADMITTEDLY THREATENED BY PETITIONERS, WHICH STRIKE, HAD IT NOT BEEN PREVENTED BY THE INJUNCTIVE ORDERS IN THIS CASE, WOULD HAVE ARISEN OUT OF CONCEDEDLY "MINOR GRIEVANCES" OF 21 MEMBERS OF PETITIONERS' BROTHERHOOD OF RAILROAD TRAINMEN?

2. IF THE ANSWER TO QUESTION NO. 1 ABOVE STATED IS "YES", DOES THE RAILWAY LABOR ACT SO FAR REPEAL THE PROVISIONS OF THE NORRIS-LaGUARDIA ACT AS TO RE-INVEST FEDERAL COURTS WITH JURISDICTION TO ENJOIN THE THREATENED STRIKE, AS RESPONDENTS CONTEND AND AS THE COURT OF APPEALS HAS HELD, OR DOES IT, AS PETITIONERS CONTEND, LEAVE RESPONDENTS TO SUCH OTHER REMEDIES AS MAY EXIST?

STATEMENT OF THE FACTS.

All quotations in the following Statement of the Facts are from the language of the first opinion of the Court of Appeals in this case, adhered to on the second opinion.

Respondents, "Chicago River and Indiana Railroad Company and 27 other railroads prayed for an injunction to restrain the Brotherhood of Railroad Trainmen from calling a threatened strike against the River Road."

Federal jurisdiction was asserted because the suit is claimed to arise under the laws of the United States and involves more than \$3000 exclusive of interest and costs. (28 U. S. C. A. 1331.)

The purpose of the threatened strike would be "to settle 21 grievances and claims through collective bargaining", that is, through consummation of the threatened strike and

settlement thereof, "rather than by award of the National Railroad Adjustment Board."

The District Court "granted a restraining order which was later dissolved when the Court" (the District Court), "decided that the Norris-LaGuardia Act was applicable and, therefore, it lacked jurisdiction to grant the relief sought."

But that Court "subsequently granted an injunction" restraining the threatened strike "pending the determination of this appeal, which was taken from the judgment of dismissal."

The Court of Appeals thus correctly summarizes the substance of the alleged grievances of the River Road (p. 928):

"The grievances of the employees involved are 19 claims for additional compensation, 1 claim for reinstatement to a higher position, and 1 claim for reinstatement to the employ of the River Road. Each of these claims was presented to the railroad superintendent who handles such cases. Each was appealed to the highest railroad officer designated to handle claims under § 3, First (i) of the Railway Labor Act, 45 U. S. C. A. § 153, First (i), and was denied by him."

Respondents' complaint alleges and petitioners do not now gainsay that "this strike would halt the operations of all trains into and out of the Chicago Stockyards, force the River Road to lay off 1,100 employees, who would lose in excess of \$12,000 a day in wages, cost the company thousands of dollars a day, and require the embargo of all shipments into and out of the Stockyards, causing irreparable damage to the 27 railroads (the other plaintiffs) and the 600 industries served" as well as entailing other damage.

In the light of these facts, initially controverted by petitioners below for want of information and belief as to the extent of damage but now conceded for all purposes in this case, petitioners have contended and still contend for

and respondents have controverted and still controvert the two following propositions of Federal statutory law:

1. THE INTENT OF THE RAILWAY LABOR ACT IS TO MINIMIZE BUT NOT TO PROHIBIT STRIKES IN THE AREA OF RAILWAY LABOR BY PROVIDING ATTRACTIVE BUT NOT COMPULSORY ADMINISTRATIVE PROCESSES AS ALTERNATIVE TO SUCH STRIKES. THIS IS TRUE AS TO STRIKES OVER PAST MINOR INDIVIDUAL GRIEVANCES AS WELL AS WITH RESPECT TO STRIKES FOR FUTURE BENEFITS.

2. EVEN IF THE NATIONAL RAILWAY LABOR ACT MUST BE CONSTRUED AS PROHIBITING STRIKES OVER MINOR GRIEVANCES, IT DOES NOT REPEAL, AMEND OR ABRIDGE THE NORRIS-LaGUARDIA ACT, WHICH WITH-DRAWS FROM FEDERAL COURTS THE JURISDICTION TO ENJOIN STRIKES SUCH AS THE STRIKE THREATENED IN THIS CASE. ON THE CONTRARY, THE NATIONAL RAILWAY LABOR ACT, EVEN IF CONSTRUED AS INTERDICTING SUCH STRIKES, DOES NOT RE-INVEST DISTRICT COURTS WITH JURISDICTION TO ENJOIN SUCH STRIKES BUT LEAVES THE CARRIERS AND THE GOVERNMENT TO SUCH REMEDIES, CIVIL OR CRIMINAL, AS MAY EXIST OTHERWISE THAN BY INJUNCTION.

As we have noted, the District Court initially sustained petitioners' contention that the Norris-LaGuardia Act was not repealed *pro tanto* by the National Railway Labor Act and therefor dismissed respondents' suit (Appendix III, *post*).

But, as noted in the first of the Court of Appeals, the District Court continued in effect a previously granted temporary injunction during the pendency of respondents' appeal.

The Court of Appeals reversed and remanded the cause for further proceedings.

As we have observed *ante*, this judgment of the Court of Appeals, which remanded this cause for further proceedings in the District Court, was not final and could have elicited

certiorari only as an extraordinary judicial measure, the issues of fact as then delineated by the pleadings not having been adjudicated.

Upon this remandment petitioners filed an express disclaimer of all contentions of law or fact save the two contentions stated above, namely, that the National Railway Labor Act does not prohibit strikes of any kind, including strikes over minor grievances such as those involved in this case, and that even if it does prohibit such strikes, it does not so far repeal the Norris-LaGuardia Act as to authorize an injunction as alternative to other remedies or sanctions in the event of such a strike or threatened strike (R 11745, p. 9).

Of course the District Court entered a judgment of injunction in obedience to the judgment of the Court of Appeals restraining the threatened strike. (*District Court's Findings*. Appendix III, p. 42.)

Petitioners appealed from this final judgment and on appeal persisted in their contentions. The Court of Appeals, adhering to its prior opinion and judgment, has affirmed the District Court's judgment of injunction (Appendix IV, p. 46.)

Jurisdiction of the District Court was invoked by respondents under the provisions of the National Railway Labor Act and was denied by petitioners under the provisions of the Norris-LaGuardia Act.

SUMMARY OF ARGUMENT.

I.

In enacting the Railway Labor Act, Congress, cognizant both of the threat of railway strikes to commerce and of the importance of labor's right to strike, intended to minimize *but not to prohibit* strikes over minor grievances by affording an *attractive but not compulsory* administrative apparatus for the resolution of such grievances.

This intent is manifest, not only from the text of the Act itself, but from the legislative history attending the adoption of the Railway Labor Act.

Particularly pertinent is the commentary of Commissioner Eastman, who was very largely the architect of the Act, which commentary is discussed in the Argument, *post*. Petitioners emphasize Commissioner Eastman's language,

"My own idea would be, let that question [the question whether Federal courts should be reinvested with jurisdiction to enjoin strikes over minor grievances] arise out of experience and find out whether there is actual need for any such power before you provide for issuing injunctions for preventing strikes."

Most important, however, is the fact that Congress was actually and acutely aware of the important question, "Should railway strikes be enjoinable?" and with measured deliberation failed to answer that question.

II.

Even if the National Railway Labor Act must be construed as prohibiting strikes over minor grievances, it does not follow that the Norris-LaGuardia Act is so far repealed as to implement the prohibition of such strikes by restoring the Federal courts with authority to issue injunctions.

Congress may well have preferred irresponsible, even unlawful, strikes to the Draconian remedy of injunction, remitting the parties to actions at law or like remedies other than injunction even though such remedies might be deemed inadequate.

ARGUMENT.

I.

THE PURPOSE OF THE RAILWAY LABOR ACT IS TO ENCOURAGE BUT NOT TO COMPEL ADMINISTRATIVE SETTLEMENT OR DETERMINATION OF CONTROVERSIES BETWEEN CARRIERS AND LABOR AND TO DISCOURAGE BUT NOT TO FORBID STRIKES AS AN ALTERNATIVE MEANS OF RESOLVING SUCH CONFLICTS.

We may thus briefly state the essence of the first of petitioners' only two contentions:¹

The legislative process that finally eventuated in the enactment of the National Railway Labor Act was indeed, as the Court of Appeals correctly recognizes, the expression of a very real Congressional desire to minimize strikes in the area of railway transportation. Such strikes are costly to railroads, to the public and to labor itself. No one—certainly not labor, which is the segment of the national economy that first feels the pinch of missing pay envelopes—

¹ Petitioners' contention that the Congress did not intend by the Railway Labor Act to prohibit strikes of any kind is logically distinct from their contention that even if that Act was intended to enact such a prohibition, it was not the intention of the 1934 amendment to repeal *pro tanto* the Norris-LaGuardia Act but was the intention of Congress to remit the carriers and the government to such other remedies, civil or criminal, as might be otherwise available.

However, although the propositions are logically distinct considerations of policy, materials of legislative history and arguments as to construction of the National Railway Labor Act are common to a discussion of both propositions.

Hence most of the presentation made by petitioners under the instant Point II, devoted to the proposition that the Railway Labor Act does not forbid strikes, is relevant under Point II, *post*, which is devoted to arguing that even if the National Railway Labor Act was intended to forbid strikes, it does not implement that prohibition by restoring injunctive jurisdiction to Federal Courts.

would gainsay the desirability of *fairly and promptly* resolving disputes between working men and their employers by means other than strikes.

The question that so evidently confronted the Congress was, "Granted that we wish to minimize strikes, which are the most drastic economic sanction available to labor short of unlawful violence, shall we achieve that end by interdicting strikes, either by direct congressional prohibition or by an attenuation of the Norris-LaGuardia Act, or shall we dissuade *but not prohibit* railway labor from striking by providing an attractive *but not compulsory* alternative to the strike as a legitimate means of economic campaign?"

That Congress was acutely and intensely aware of this important question is as evident from the legislative materials relied upon by the plaintiff railroad as it is from those relied upon by the defendant Brotherhood.

To be sure, the excerpts from legislative history invoked by the plaintiff point in one direction. The legislative materials relied upon by the Brotherhood point in a diametrically opposite direction. But all of the legislative history indicates that Congress was aware, not oblivious of the very obvious question, "Shall we or shall we not forbid strikes?" *Nevertheless Congress forebore explicit repeal, amendment or abridgement of the Norris-LaGuardia Act.*

That Congress intended to discourage *but did not intend to prohibit* strikes and that Congress certainly did not intend to re-invest Federal courts with jurisdiction to *enjoin* strikes seems clear to us from the following passages of legislative history:

Congressman Pettengill stated at the House Hearings (House Committee on Interstate and Foreign Commerce, 73rd Cong. 2nd Sess. on H. R. 7650) at p. 58:

"Well, I know that we all indulge the *hope* that matters as important to the public as uninterrupted train

service shall not be interrupted, if possible, and that means shall be provided so that those strikes may not happen; *but I am not prepared to go so far as to say that labor shall, by law, be required to abandon that ancient weapon which has been recognized by the Supreme Court over and over again.*" (Emphasis supplied.)

Congressman Cooper of the Committee voiced similar sentiments (at pp. 60, 61).

At this point, there occurred the only discussion on the specific question before this Court which is whether a Federal court has jurisdiction to enjoin a strike over grievances.

Commissioner Eastman, draftsman of the 1934 amendments, when asked by Congressman Wolverton whether the bill contained any provision that would enable the court to obtain an injunction against a labor organization, replied:

"Well, I am not able to give you an answer to that. That is a legal question to be frank with you, that I have not gone into." (At p. 61.)

Later Eastman stated (again at p. 61):

"Now the only question I am in doubt about is whether or not there should be an injunction under this Act to prevent a strike. Now, I am not clear about that."

Mr. Carmalt, Eastman's legal adviser, said,

"Now, the question of strike had not arisen in connection with it until this morning (referring to the power of courts to enjoin strikes over grievances) at p. 63.

"Mr. Wolverton: Is it your opinion that there should be such a provision in the bill or not?"

"Mr. Carmalt: I hesitate to talk effectuating a policy in that regard.

"Mr. Wolverton: I am only asking you to express your opinion."

Carmalt then continues:

"I would not say that it (the bill) gives any authority in that regard (whether an injunction could issue to prevent an organization from going on strike), because it was assumed that would be true, I think, but there has been no discussion of it until this morning" (at p. 63).

Commissioner Eastman then took up the colloquy:

"Commissioner Eastman. I may say, so far as I am concerned, it had not seemed to me that matter was of a contingency of importance, because I cannot conceive of organizations striking over the settlement of grievances, particularly when they had been passed upon by an impartial tribunal under Government auspices.

"It is serious enough thing to strike when a major matter is involved; but when you have only minor grievances and they have had full opportunity to be heard and have had their day in court before a tribunal, it hardly seems to me that that was a question that was likely to arise. *My own idea would be, let that question arise out of experience and find out whether there is actual need for any such power before you provide for issuing injunctions for preventing strikes.*"

The above excerpts are Commissioner Eastman's *final* remarks concerning the problem as to whether strikes are enjoined under Section 153 of the Railway Labor Act. Commissioner Eastman's statement that experience should determine "whether there is actual need for any such power before you provide for issuing injunctions for preventing strikes" declares the opinion of the draftsman of the 1934 Amendments of the Railway Labor Act to be that the act did *not* provide "for issuing injunctions for preventing strikes."

We recognize, as noted in the opinion of the Court of Appeals for the Seventh Circuit in the instant case, that one Harrison, a legislative representative of petitioner Brother-

hood, said at a hearing before a Senate Committee on the Bill for the 1934 Amendments that:

"We are now ready to concede that we can risk having our grievances go to a board and get them determined, and that is a contribution that these organizations are willing to make."

In the first place, petitioner is not bound by the statements of its legislative representative although concededly such statements are material legislative history.

In the second place, Mr. Harrison's views, those of a laboring man, should not be given weight equal to that accorded to the deliberate expressions of Commissioner Eastman, a man of vast experience in the impartial position of member of the Interstate Commerce Commission, who was largely the architect of this important measure.

But to us, so far as legislative history is pertinent, the paramount consideration is, not the opinion of any spokesmen for or opponent of any version of legislative draftsmanship that was ultimately merged in the National Railway Labor Act, but the fact that spokesmen for, opponents of, and presumably neutrally inquiring critics of the bill all perceived the presence and importance of the question whether strikes of any kind were to be prohibited and, *having perceived the question, appreciating its importance and being fully cognizant of the provisions of the Norris-LaGuardia Act enacted only about two years previously, refused to enact into law any repeal of that important statute!*

~~We can~~ put the matter thus tersely:

Congress knew that the Norris-LaGuardia Act withdrew from Federal courts the jurisdiction to enjoin strikes of the kind involved in this case. It knew that the National Railway Labor Act, both as proposed and as enacted, was intended to discourage strikes. It was aware of the presence

and great national moment of the question whether the National Railway Labor Act, if amended, would or would not, should or should not, repeal, amend or abridge the Norris-LaGuardia Act.

Cognizant of that question and of its great importance, Congress with measured deliberation failed to answer the question.

It is thus clear that Congress had no active intention to repeal the Norris-LaGuardia Act and therefore must have intended to continue it in force.

Congress was aware, both at the time of the enactment of the Norris-LaGuardia Act and at the time of the enactment of the National Railway Labor Act, of the history of injunctions against strikes in both State and Federal courts. It was aware, not presumably but actually, of the debates in the arenas of economics, practical and ideal politics and social ethics as to whether labor has or should have the "right to strike" and as to whether even if labor is not to possess that right, the right shall be abridged by injunction and the drastic sanctions of contempt proceedings, with or without trial by jury, even where the strike is concededly or assumedly unlawful, contrary to public policy or not in the interests of public welfare.

Having pondered these momentous issues, Congress uttered the National policy explicit in the Norris-LaGuardia Act.

The teachings of this Court's leading decisions expository of the Norris-LaGuardia Act were thus incisively summarized and their impact appraised, correctly, we submit, by the Court of Appeals for the Fifth Circuit in the *Central of Georgia* case (229 F. 2d 901) in the following language at p. 904:

"For, as has been held time and again, the purpose of the strike, whether it is or is not illegal, is not a limita-

tion upon the prohibitions of the statute. *Cf. Wilson & Co. v. Birl*, 105 F. 2d 948, and *East Texas Motor Freight Lines v. Teamsters*, 163 F. 2d 10, where this court held that such a contention was an attempt to enlarge Federal Court jurisdiction as limited by the Act. *Cf. Milk Wagon Drivers Union v. Lake Valley Farm Products*, 311 U. S. 91, and 43 C. J. S. 748 and 29 A. L. R. (2) 360."

The Norris-LaGuardia Act is not only directly inhibitory of the injunctive process against even unlawful strikes but is strongly confirmatory of the substantive right to strike in the general case, that is, where the right to strike is neither attended by or intended to coerce unlawful action.

Extreme reactionaries, like extreme radicals, would impress the service of labor by coercive measures, injunctive in form and summary in sanction.

Congress, however, gave enactment to a median philosophy: It was the will of Congress that the right to strike should not be abridged, *at least not by injunction*, at the behest either of a capitalistic employer or of a socialist state.

It is this philosophy that, so respondents contend and so the Court of Appeals for the Seventh Circuit has held, succumbed to implied repudiations *only as to railway labor* two years after it was enacted.

And this is true, so respondents contend and so the Court of Appeals below has held, although the "repeal" was achieved by cryptic intimation, not by overt declaration, although Congress explicitly pondered and debated the matter!

Surely, had Congress intended a retraction of the policy of the Norris-LaGuardia Act, it would have so declared in unmistakable terms.

Is this connection, we deem it important to observe and strongly emphasize that it is not enough to grant that Con-

gress had no active intention to continue in effect the policy of the Norris-LaGuardia Act. It must clearly appear that Congress had an active and affirmative intention to repeal this Act before the Act may be said to be repealed by implication.

II.

EVEN IF THE NATIONAL RAILWAY LABOR ACT WAS INTENDED TO INHIBIT STRIKES OVER MINOR GRIEVANCES, IT WAS NOT THE INTENTION OF CONGRESS SO FAR TO REPEAL THE NORRIS-LA GUARDIA ACT AS TO IMPLEMENT THAT INHIBITION BY FEDERAL INJUNCTIONS.

Under Point I of this Argument, *ante*, we have, we believe, demonstrated that it was not the intention of Congress to proscribe the right to strike at all even though it was the intention of that Act to provide an attractive alternative to the exercise of that right.

But even if it be assumed *arguendo* that Congress intended to prohibit strikes by railway labor, it does not follow without express congressional utterance that Congress intended to implement that prohibition by restoring the right to injunction.

Even where a strike is or may be plainly illegal, the Norris-LaGuardia Act (unless amended *pro tanto* by the tenuous inferences drawn by the Court of Appeals for the Seventh Circuit) withdraws Federal jurisdiction to grant an injunction.

In *Milk Wagon Drivers' Union v. Lake Valley Farm Products, Inc.*, 311 U. S. 91, the Court said at p. 102:

"The Norris-LaGuardia Act, passed in 1932, is the culmination of a bitter political, social and economic controversy extending over half a century. Hostility

to 'government by injunction' had become the rallying slogan of many and varied groups."

Summing up its conclusions, the Court said at page 103:

"For us to hold in the face of this legislation, that the federal courts have jurisdiction to grant injunctions in cases growing out of labor disputes, merely because alleged violations of the Sherman Act are involved, would run counter to the plain mandate of the Act and would reverse the declared purpose of Congress."

The reasoning of the Court of Appeals for the Seventh Circuit in the instant case was that (1) the threatened strike, if consummated, would contravene the policy enacted by the National Railway Labor Act, a premise that petitioners concede only to the limited extent and in the restricted sense that it was the intent of the National Railway Labor Act to discourage strikes but not to prohibit them, (2) hence the strike violated the provisions of the National Railway Labor Act, a proposition that petitioners resist and (3) therefore injunctive remedy was available even though the Court found it necessary to imply a repeal *pro tanto* of the Norris-LaGuardia Act.

Even if it be conceded, and it is not conceded, that the strike violated the National Railway Labor Act, it would not follow that *injunctive* remedy is available. It is not novel jurisprudence to withhold remedy by injunction or, indeed, any other or all equitable remedies although violations of common law, statutory or even constitutional rights are clear and admitted.

This is so even when rights at common law or criminal sanctions are plainly inadequate to vindicate the substantive rights of the complaining parties.

In the fields of racial segregation, antitrust law, unfair trade and many other fields of law intended to preserve the rights of the public, as well, of course, as in many cases in-

volving contractual and other private rights where only the interests of the immediate parties are involved, there is nothing new in withholding injunctions, judgments for specific performance or other equitable relief although violations of legal rights are palpable and an action for damages is clearly inadequate.

Congress may well deem the Draconian remedy of injunction a cure worse than the disease of occasional irresponsible, even illegal, strikes.

• This philosophy has found express application under the Norris-LaGuardia Act.

In each of the following cases a United States Court of Appeals has either recognized or assumed that a strike would be illegal and yet has held that the Norris-LaGuardia Act inhibits injunction:

East Texas Motor Freight Lines v. Teamsters, 163 F. 2d 10 (C. A. 5, 1947), holding that a claim that the Act sought to be enjoined violated the Motor Carriers' Act, even if well founded, would not support jurisdiction to issue an injunction.

Wilson v. Birl, 105 F. 2d 948, in which the Court said at page 952:

"Moreover, the words 'unlawful acts' in Section 7 (a), which must be alleged in the complaint and included in the findings, cannot be read separately from the rest of the section, and assume appropriate meaning only when we consider the section as a whole. Irreparable injury to the complainant's property, which has no police protection, is an essential averment and finding; and the 'unlawful acts' do not constitute a general reference to anything that may be considered illegal, but specifically to the acts of violence which the authority of the executive is calculated to control."

It is clear that even though a strike may involve both the employer and the employee in violation of a substantive Federal statute, the Norris-LaGuardia Act is not repealed. On the contrary, although other sanctions may be appropriate, injunction is not available. Mere violation of property rights or Federal laws will not authorize an injunction to restrain a strike.

Most pertinent are this Court's decisions in *General Committee v. M. K. T. R. Co.*, 320 U. S. 325, and in the companion cases decided the same day, *Switchmen's Union v. Natl. Mediation Bd.*, *id.* 297, and *General Committee v. Southern-Pac. R. Co.*, *id.* 338.

In all of those cases disputes between rival labor organizations, unresolved by the apparatus provided by the National Railway Labor Act, resulted in suits for injunction.

This Court declined to reach the merits in those cases because it held that Federal jurisdiction of equitable character was absent.

The Court, after adverting tersely but comprehensively to the history of the Railway Labor Act, said at pages 332-3:

"In short, Congress by this legislation has freely employed the traditional instruments of mediation, conciliation and arbitration. Those instruments, in addition to the available economic weapons, remain unchanged in large areas of this railway labor field. On only certain phases of this controversial subject has Congress utilized administrative or judicial machinery and invoked the compulsions of the law. Congress was dealing with a subject highly charged with emotion. Its approach has not only been slow; it has been piecemeal. Congress has been highly selective in its use of legal machinery. The delicacy of these problems has made it hesitant to go too fast or too far. *The inference*

is strong that Congress intended to go no further in its use of the processes of adjudication and litigation than the express provisions of the Act indicate.

"That history has a special claim here. It must be kept in mind in analyzing a bill of complaint which, like the present one, seeks to state a cause of action under the Railway Labor Act and asks that judicial power be exerted in enforcement of an obligation which it is claimed Congress has created."

The language emphasized above, "The inference is strong that Congress intended to go no further in its use of the processes of adjudication and litigation than the express provisions of the Act indicate", expresses this Court's deliberate opinion that there should be no adjudication under the Act that the Act does not specifically authorize. *A fortiori* then, the Act should not be read as repealing by implication the Norris-LaGuardia Act.

It seems clear to us, as it was clear to the court in the *Central of Georgia* case, that even if Congress intended to prohibit strikes by the National Railway Labor Act, it is unthinkable that it intended to restore the remedy of injunction in repudiation of the Norris-LaGuardia Act, only two years after its passage, in the absence of the plainest of language to accomplish that result.

CASES RELIED UPON BY RESPONDENTS, THE COURT OF APPEALS FOR THE SEVENTH CIRCUIT AND THE DISSENT IN THE CENTRAL OF GEORGIA CASE DISTINGUISHED.

It is significant that never once since the enactment of the National Railway Labor Act has this Court sustained an injunction sought by a railway employer to restrain a strike.

The following cases, cited by respondents, the Court of Appeals for the Seventh Circuit and the dissenting opinion in the *Central of Georgia* case, may thus be briefly distinguished:

1. *Virginian Ry. Co. v. System Federation No. 40*, 300 U. S. 515, 81 L. ed. 789, 57 S. Ct. 592, involved an injunction sought by it to compel a railway carrier to recognize and treat with their union, the only authorized bargaining representative, as is required by Section 2 of the Railway Labor Act. But, there it was the *carrier* who sought the *protection of the* Norris-LaGuardia Act, seeking to rely upon its Section 9 (109), which deals with the *scope of* injunctions. No *strike*, or any other act enumerated in Section 4 (104), *was even involved* in that case. The court merely held that the Norris-LaGuardia Act was not passed to shield the actions of a carrier which had violated the Railway Labor Act. Obviously, a railroad's duty to treat with an employees' bargaining representative (Railway Labor Act's Section 2), is not one of those acts exempt from injunction by the Norris-LaGuardia Act's Section 4 (104).

2. *Graham v. Brotherhood of Locomotive Firemen and Enginemen*, 338 U. S. 232, 94 L. ed. 22, 70 S. Ct. 14, dealt with an injunction issued in favor of *employees* against certain railroads and a union restraining compliance with a collective labor agreement which discriminated against colored firemen. Like the *Virginian Ry.* case, *supra*, no *strike* or any other act exempted by Section 4 (104) of the Norris-LaGuardia Act was involved. So, this court held that

"the Norris-LaGuardia Act (29 U. S. C. Secs. 101 *et seq.*) did not deprive Federal courts of jurisdiction to compel compliance with positive mandates of the Railway Labor Act (45 U. S. C. Secs. 151 *et seq.*) enacted for the benefit and protection, within a particular field, of the same groups whose rights are preserved by the Norris-LaGuardia Act".

While the Court held that the controversy there was a labor dispute, nevertheless it further said that the Railway Labor Act imposed upon the bargaining representative the duty to represent all without hostile discrimination. Accordingly,

it said that the Norris-LaGuardia Act did not "contain anything to suggest that it would deprive these Negro firemen of recourse to equitable relief from illegal discriminatory representation by which there would be taken from them their seniority and ultimately their jobs." No strike, or any other act enumerated and protected against injunction by Section 4 (104) of the Norris-LaGuardia Act was even involved there.

3. *Texas and New Orleans Railroad Company v. Brotherhood of Railway and Steamship Clerks*, 281 U. S. 548, 74 L. ed. 1034, 50 S. Ct. 427, involved an injunction by employees against a railway carrier to restrain the company's influence and coercion of them with reference to their organization and designation of their collective bargaining representative under the Railway Labor Act as it existed before the 1934 amendment. Such created a duty, which was judicially enforceable. Again no strike or any other act protected against injunction by Section 4 (104) of the Norris-LaGuardia Act, was involved.

Moreover the Norris-LaGuardia Act had not even been passed when this case was decided.

4. *Brotherhood of Railroad Trainmen v. Howard*, 343 U. S. 768, 96 L. ed. 1293, 72 S. Ct. 1022, was another Negro discrimination decision in which, like *Graham, supra*, certain railway employees obtained an injunction against enforcement of a racially discriminatory agreement made by their carrier and bargaining representative, this court holding that such an agreement was void and unenforceable. In so deciding it held that the trial court had jurisdiction, regardless of the Norris-LaGuardia Act, citing the other racial discrimination cases of *Steele* (323 U. S. 192, 89 L. ed. 173, 65 S. Ct. 226), and *Graham, supra*. Nothing in the *Howard* case is supportive of petitioner's contention. Here again, in

the *Howard* case, there was no strike or any other of the acts specified in Section 4 (104) of the Norris-LaGuardia Act.

None of the *Virginian Ry. Co.*, *Graham Texas and N. O. Ry. Co.*, and *Howard* cases involved either a (1) strike, or (2) any other activity insulated by Section 4 (104) of the Norris-LaGuardia Act or (3) the Adjustment Board. On the contrary, *all* of these cases involved injunctions granted (1) at the instance of *employees* against their railway carrier *employer* and (2) for protection of their rights as contemplated by the Norris-LaGuardia Act.

5. *Order of Railway Conductors v. Pitney*, 326 U. S. 561, 90 L. ed. 318, 66 S. Ct. 322, is next cited. There the Court *denied* an injunction. Furthermore, the case did not involve either (1) a strike or (2) any other activity embraced in Section 104, of the Norris-LaGuardia Act. Actually, it involved a dispute primarily *between two railway brotherhoods*, each claiming that its respective contract with the railway carrier entitled it to the work in question. The carrier was in reorganization, and filed in the federal court an equitable proceeding in the nature of a petition to instruct its trustee and for injunction. This case involved an interpretation of the labor contracts of two competing unions. The court held that until those contracts had been construed by the National Railroad Adjustment Board, one could not tell whether the conductors were entitled to perform the work which they were asking to have enjoined from being to the competing union. It is fallacious to argue that the denial of an injunction is proof of the court's power to grant one. The court stayed dismissal of the action as it involved a question of instructions to the court's trustee. The petitioner's argument that the court's purpose in granting the stay was to maintain the status quo is wholly misleading and incorrect.

6. *Elgin, Joliet and Erie Ry. Co. v. Burley*, 325 U. S. 711, 89 L. ed. 1886, 65 S. Ct. 1282, is important because it differentiates between "grievances" and "major disputes" only insofar as their administrative handling is concerned. It does not involve either (1) an injunction or (2) a strike or any other of the acts insulated by Section 104 of the Norris-LaGuardia Act. Like *Pitney*, it does not even mention that act. At the outset it referred to certain language in the *Moore* case (*Moore v. Illinois Central Ry. Co.*, 312 U. S. 630, 85 L. ed. 1089, 61 S. Ct. 754), to-wit that the machinery provided for settling disputes was not "based on a philosophy of legal compulsion" but created "a system for peaceful adjustment and mediation voluntary in its nature," and its holding that resort to Adjustment Board may not be necessary in a case involving unlawful discharge. The court points out that another of the Railway Labor Act's "primary commands, judicially enforceable" is the duty to negotiate. But, nowhere in the *Burley* decisions can be found any support that a United States District Court may enjoin a strike, as contended here.

7. *Slocum v. Del., Lackawanna & Western Railroad Co.*, 399 U. S. 239, 94 L. ed. 795, 70 S. Ct. 577, is similar to the *Pitney* case, applying its doctrine to state courts. No injunction or other equitable relief was sought in the *Slocum* case. There was no strike. The Norris-LaGuardia Act was not even mentioned. What this Court said as to the "exclusiveness" of the jurisdiction of the National Railway Adjustment Board related solely to the exclusiveness of administrative, as opposed to judicial authority. The Court did not touch the question of settlement by voluntary means or the use of economic pressure.

8. *Order of Railway Conductors of America v. Southern Railway Company*, 339 U. S. 255, 94 L. ed. 811, 70 S. Ct. 585, was like the *Slocum* case in that the carrier had filed in the

State court its petition for declaratory judgment to interpret a collective bargaining agreement. This court, at the outset, remarked that the case presented "the same statutory question as" the *Slocum* case, and held that "for reasons set out in the *Slocum* case . . ." the South Carolina State Court was without power to interpret the terms of this agreement and to adjudicate the dispute. Certainly, nothing in that case is supportive of petitioner's position for an injunction against a strike.

In the *Pitney*, *Slocum* and *Southern Ry.* cases the doctrine of exclusive administrative jurisdiction constituted a valid defense against the carriers' efforts to obtain judicial relief. In the case at bar the carrier seeks to invoke that doctrine as supportive of an injunction in its behalf. In fact, in the three cases mentioned no such use was made of the doctrine. In *Pitney* an injunction was *denied* because of the doctrine. It is apparent that the cases cited do not in any way justify the use which petitioner is attempting to make of that doctrine.

9. The last decision of this court relied upon by the Court of Appeals below is *Cook County National Bank v. United States*, 107 U. S. 445, 27 L. ed. 537, 2 S. Ct. 561. The opinion in very general terms, which the court used to express the repeal or supersession of the insolvency act of 1797 by the National Banking Law enacted some decades later. We do not quarrel with the principle there stated except to point out that repeals by implication are not favored.

The character of the banking laws and the character of the Railway Labor Act as repealing statutes by implication are not at all alike. Moreover the time element between the National Banking Laws and the Insolvency Laws of 1797 and the time of approximately two years between the Norris-LaGuardia Act and the Railway Labor Act are totally

dissimilar. It is impossible to see why the reason for the repeal of the insolvency laws of 1797 by the banking act forms any grounds whatever for the repeal of the Norris-LaGuardia Act by the Railway Labor Act. As the language of this Court's opinion says,

"The question is one respecting the intentions of the Legislature."

Conclusion.

The considerations above developed demonstrate that Congress did not intend to forbid strikes by the enactment of the National Railway Labor Act.

The conclusion is even clearer that if Congress did intend to prohibit strikes by railway labor, it did not intend to repeal the Norris-LaGuardia Act so as to implement that prohibition by injunction.

This is true whether the disputes involved are "major" or "minor" and whether they have for their object the redress of alleged past grievances or the fulfilment of demands for future benefits.

It is therefore respectfully submitted that the judgment of the Court of Appeals should be reversed without remandment.

Respectfully submitted,

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APPENDIX I.

**THE CHICAGO RIVER AND INDIANA RAILROAD
COMPANY, et al.,**

v.

**BROTHERHOOD OF RAILROAD TRAINMEN,
Appellees, 229 F. 2d 926.**

Before FINNEGAN, LINDLEY and SCHNACKENBERG, Circuit Judges.

SCHNACKENBERG, Circuit Judge.

By amended complaint the Chicago River and Indiana Railroad Company¹ and 27 other railroads prayed for an injunction to restrain the Brotherhood of Railroad Trainmen² from calling a threatened strike against the River Road. Trainmen's counsel state that the purpose of said strike is to settle 21 grievances and claims through collective bargaining rather than by an award of the National Railroad Adjustment Board.³ The district court granted a restraining order which was later dissolved when the court decided that the Norris-LaGuardia act was applicable and, therefore, it lacked jurisdiction to grant the relief sought. It dismissed the cause. The court subsequently granted an injunction pending the determination of this appeal, which was taken from the judgment of dismissal.

The grievances of the employees involved are 19 claims for additional compensation, 1 claim for reinstatement to a higher position, and 1 claim for reinstatement to the employ of the River Road. Each of these claims was presented to the railroad superintendent who handles such cases. Each was appealed to the highest railroad officer designated to handle claims under § 3, First (i) of the Railway Labor Act, 45 U.S.C.A. § 153, First (i), and was denied by him.

The amended complaint charges that this strike would halt the operations of all trains into and out of the Chicago Stockyards, force the River Road to lay off 1,100 em-

¹ Sometimes referred to herein as "River Road".

² Sometimes referred to herein as "Trainmen".

³ Sometimes referred to herein as the "Board".

ployees, who would lose in excess of \$12,000 a day in wages, cost the company thousands of dollars a day, and require the embargo of all shipments into and out of the Stockyards, causing irreparable damage to the 27 railroads (the other plaintiffs) and the 600 industries served. The Trainmen's answer alleges that they do not have sufficient information to form a belief as to the truth or falsity of these charges and, therefore, they deny the same. The amended complaint was dismissed without the taking of evidence.

The amended complaint and the answer show that the River Road, on July 15, 1954, submitted to the Board the claims in dispute and the Board has not yet rendered a decision on any of them.

The first contested issue herein, as stated by the Trainmen, is: "Does the Railway Labor Act prohibit a union from striking over claims and grievances, matters which are within the jurisdiction of the National Railroad Adjustment Board?" Plaintiffs say that it is mandatory under the Railway Labor Act that minor disputes be adjusted instead of being made the subject of a strike. They contend that such command must be enforced, even though the act itself does not provide enforcement machinery, and that an injunction is appropriate to this end. The Trainmen contend that the Railway Labor Act does not prohibit a union from striking over claims and grievances though such matters are within the jurisdiction of the Board. Their answer avers that the effect of the strike, if successful, would be settlement of said disputes through collective bargaining instead of by award of the Board.

1(a). The Railway Labor Act of 1926¹ as amended in 1934² expressly states its purposes,³ the first of which is "To avoid any interruption to commerce or to the operation of any carrier engaged therein"; and the fifth of which is "to provide for the prompt and orderly settlement of all disputes growing out of grievances"

(1-3) The difference between disputes over grievances and disputes concerning the making of collective agreements is traditional in railway labor affairs. It has as-

¹ It is agreed that the claims and grievances which are the subject of the suit at bar are all so-called "minor disputes".

² 45 U.S.C.A. § 151 et seq.

³ Ibid. § 151a.

sumed large importance in the Railway Labor Act of 1934, substantively and procedurally. *Elgin, J. & E. R. Co. v. Burley*, 325 U. S. 711, at page 722, 65 S. Ct. 1282, at page 1289, 89 L. Ed. 1886. As to disputes over grievances, the act contemplates the existence of a collective agreement already concluded or, at any rate, a situation in which no effort is made to bring about a formal change in terms or to create a new one. Such a dispute relates either to the meaning or proper application of a particular provision with reference to a specific situation or to an omitted case. So-called minor disputes, involving grievances, the 1934 act sets apart from major disputes and provides for them very different treatment. The court said, 325 U. S. 724, 65 S. Ct. 1290:

"The Act treats the two types of dispute alike in requiring negotiation as the first step toward settlement and therefore in contemplating voluntary action for both at this stage, in the sense that agreement is sought and cannot be compelled. To induce agreement, however, the duty to negotiate is imposed for both grievances and major disputes.

"Beyond the initial stages of negotiation and conference, however, the procedures diverge. 'Major disputes' go first to mediation under the auspices of the National Mediation Board; if that fails, then to acceptance or rejection of arbitration, cf. § 7; (*Brotherhood of Railroad Trainmen v. Toledo, P. & W. R. Co.*, 321 U. S. 50, 64 S. Ct. 413, 88 L. Ed. 534; and finally to possible presidential intervention to secure adjustment. § 10. For their settlement the statutory scheme retains throughout the traditional voluntary processes of negotiation, mediation, voluntary arbitration, and conciliation. Every facility for bringing about agreement is provided and pressures for mobilizing public opinion are applied. The parties are required to submit to the successive procedures designed to induce agreement. § 5, First (b). But compulsions go only to insure that those procedures are exhausted before resort can be had to self-help. No authority is empowered to decide the dispute and no such power is intended, unless the parties themselves agree to arbitration.

"The course prescribed for the settlement of grievances is very different beyond the initial stage. There-

after the Act does not leave the parties wholly free, at their own will, to agree or not to agree. On the contrary, one of the main purposes of the 1934 amendments was to provide a more effective process of settlement.

"Prior to 1934 the parties were free at all times to go to court to settle these disputes. * * * Several organizations took strike ballots and thus threatened to interrupt traffic, a factor which among others induced the Coordinator of Transportation to become the principal author and advocate of the amendments. The sponsor in the House insisted that Congress act upon them before adjournment for fear that if no action were taken a railroad crisis might take place. * * * the Adjustment Board was created and given power to decide them."

The court then said, 325 U. S. 727, 65 S. Ct. 1291:

"The procedure adopted is not one of mediation and conciliation only, like that provided for major disputes under the auspices of the Mediation Board. Another tribunal of very different character is established with 'jurisdiction' to determine grievances and make awards concerning them. Each party to the dispute may submit it for decision, whether or not the other is willing, provided he has himself discharged the initial duty of negotiation. § 3, First (i). Rights of notice, hearing, and participation or representation are given. § 3, First (j). In some instances judicial review and enforcement of awards are expressly provided or are contemplated. § 3, First (p); cf. § 3, First (m). When this is not done, the Act purports to make the Board's decisions 'final and binding.' § 3, First (m)."

The procedure prior to 1934 was in fact and effect nothing more than one for voluntary arbitration. No dispute could be settled unless submitted by agreement of all parties. The Board was created to remove the settlement of grievances from this stagnating process and bring them within a general and inclusive plan of decision. The aim was not to dispense with agreement. It was to add decision where agreement fails and thus to safeguard the public as well as private interests against the harmful effects of the pre-

existing scheme. *Elgin, J. & E. R. Co. v. Burley, supra*, 325 U. S. 727, 65 S. Ct. 1292.

At a hearing before a senate committee on the bill for the 1934 amendments, the Railroad Brotherhoods' representative, Mr. Harrison, stated:

"These railway labor organizations have always opposed compulsory determination of their controversies. We have lived a long time and got a lot of experience, and we know that these minor cases that develop out of contracts that we make freely, and * * * we are now ready to concede that we can risk having our grievances go to a board and get them determined, and that is a contribution that these organizations are willing to make". 325 U. S. 728, note 24, 65 S. Ct. 1292.

(4) As to major disputes, the act requires the parties to submit to the successive procedures designed to induce agreement. § 5, First (b). But compulsions go only to insure that those procedures are exhausted before resort can be had to self-help. That means, that as to disputes over the formation of collective agreements or efforts to secure or change them, the issue not being whether an existing agreement controls the controversy, the act recognizes the right of employees to strike, but postpones such action until the successive procedures set up by the act have been exhausted. No authority is empowered to decide this dispute, unless the parties agree to arbitration.

(5) On the other hand, as to minor disputes, such as those relating to grievances and claims, either party may submit a dispute to the Board for decision, *whether or not the other is willing*, provided he himself has discharged the initial duty of negotiation. Except in instances where judicial review and enforcement of awards are expressly provided for or contemplated by the act, § 3, First (p); cf. § 3, First (m), the Board's decisions are final and binding. We hold this to mean that a strike in regard to such minor disputes, or the Board's decisions thereon, would be illegal.

(b). Plaintiffs contend that, inasmuch as it is mandatory under the Railway Labor Act that grievances be adjusted on a submission by either party and that they cannot be the subject of a strike, such command must be enforced, even though the act itself does not provide enforcement machinery. The Trainmen deny this conclusion, "because

no provision of the Railway Labor Act prohibits a strike over grievances"

In speaking of the Railway Labor Act of 1926, in *Texas & N. O. R. Co. v. Brotherhood of Ry. & S. S. Clerks*, 281 U. S. 548, 50 S. Ct. 427, 74 L. Ed. 1034, the court was discussing an injunction granted by a district court restraining the railroad company from interfering with its clerical employees in the matter of their organization for the purposes set forth in that act. At page 569 of 281 U. S., at page 433 of 50 S. Ct., it said:

"The creation of a legal right by language suitable to that end does not require for its effectiveness the imposition of statutory penalties. Many rights are enforced for which no statutory penalties are provided. . . . The right is created and the remedy exists."

The court affirmed the decree granting the injunction. To the same effect are *Virginian Ry. Co. v. System Federation*, 300 U. S. 515, 57 S. Ct. 592, 81 L. Ed. 789, *Steele v. Louisville & N. R. Co.*, 323 U. S. 192, at page 207, 65 S. Ct. 226, 89 L. Ed. 173, and *Brotherhood of Railroad Trainmen v. Howard*, 343 U. S. 768, 72 S. Ct. 1022, 96 L. Ed. 1283.

(6) We, therefore, hold that the district court has jurisdiction to issue an injunction restraining the Trainmen from striking over grievances and claims, unless the Norris-LaGuardia act prevents or limits the court's power so to do.

(7) 2. The Trainmen say that the second contested issue herein is: "Did the Trial Court err in holding that the Norris-LaGuardia Act was applicable and that it therefore lacked jurisdiction to grant the relief sought by the plaintiffs?" Plaintiffs respond that the Norris-LaGuardia act does not prevent the federal courts from issuing injunctions to enforce compliance with the provisions of the Railway Labor Act. The Trainmen argue that the Norris-LaGuardia act has divested the trial court of jurisdiction to grant the injunction sought against the threatened strike. They take the position that "no restraining order or injunction can be issued enjoining any actual or threatened strike unless the terms and conditions of the Norris-LaGuardia Act are fully complied with. Defendants so contend that such is the law even assuming that the provisions of the Railway Labor Act, here involved, will be violated by the threatened strike."

In enacting the Norris-LaGuardia act in 1932¹ congress sought to correct many of the alleged abuses of the injunctive remedy which labor disputes had brought to national prominence during the quarter century preceding the act. In so doing congress purported to cover the general area comprehended by the term "labor dispute" irrespective of the parties involved or the possibilities of any special situation which might arise. The vital and unique position of the railroad industry in the economy of this country, coupled with experience acquired after the act's enactment, demonstrated in 1934 the need for special methods and techniques of handling labor disputes affecting railroads which were so distinctive as to require special treatment in the public interest.

(8) Accordingly, the 1934 amendments to the Railway Labor Act were enacted. They provided *inter alia* for compulsory and determinative adjustment of minor disputes. As we have already seen, the compulsory features of the Railway Labor Act are enforceable by injunctions issued by the federal district courts. We cannot presume that congress, in so amending the Railway Labor Act in 1934, intended that such an injunction could not issue unless compliance was first had with the act of 1932 dealing with the general subject of injunctions in labor disputes.

(9, 10) The Railway Labor Act, as amended in 1934, embodies a complete plan for avoiding any interruption to commerce or to the operation of any carrier engaged therein.² It is directed to the needs of the railroad industry, employers and employees alike, having in mind the paramount interest of the public. It does not call for the aid of, or submit to, the limitations of the Norris-LaGuardia act. Indeed, the provisions in regard to injunctions prohibiting strikes in labor disputes, as contained in the Norris-LaGuardia act, if controlling in a situation such as we have here, arising under the Railway Labor Act, would practically render the compulsory features of the latter act nugatory. We are unimpressed with the argument of Trainmen's counsel that damages suffered by the many persons who might be injured by such a strike could be compensated in private suits brought therefor. A right to relief by suit

¹ 29 U.S.C.A. §101 et seq.

² 45 U.S.C.A. §151a.

for damages in such a situation would be an illusory remedy and a poor protection of the public interest. The effect of a strike against the railroads of the nation requires the expeditious intervention of a court to safeguard that interest. This can be accomplished only by the prompt employment of a court's equitable powers, primarily its injunctive power. The compulsion inherent in the Railway Labor Act requires prompt and effective use of judicial machinery and, there being no clear intention contained in that act to the effect that the Norris-LaGuardia act prohibits or limits the issuance of injunctions to implement the Railway Labor Act, we hold that the Norris-LaGuardia act does not apply to the case at bar.

(11) As was said in *Cook County National Bank v. United States*, 107 U. S. 445, 2 S. Ct. 561, at page 566, 27 L. Ed. 537, at page 539:

"A law embracing an entire subject, dealing with it in all its phases, may thus withdraw the subject from the operation of a general law as effectually as though, as to such subject, the general law were in terms repealed. The question is one respecting the intention of the legislature."

When considering the effect of the 1934 amendment which added new provisions in § 2, Ninth, of the Railway Labor Act, in *Virginian Ry. Co. v. System Federation*, 300 U. S. 515, at page 545, 57 S. Ct. 592, at page 598, 81 L. Ed. 789, the court said:

"Neither the purposes of the labor act, as amended, nor its provisions when read, as they must be, in the light of our decision in the Railway Clerks case, *supra*, lend support to the contention that its enactments, which are mandatory in form and capable of enforcement by judicial process, were intended to be without legal sanction."

The court held that a decree for a mandatory injunction granted by a district court, for the purpose of enforcing the provisions of § 2, Ninth, of said act, was proper, saying, 300 U. S. at page 552, 57 S. Ct. at page 601:

"More is involved than the settlement of a private controversy without appreciable consequences to the public. The peaceable settlement of labor controversies, especially where they may seriously impair the ability

of an interstate rail carrier to perform its service to the public, is a matter of public concern. That is testified to by the history of the legislation now before us, the reports of committees of Congress having the proposed legislation in charge, and by our common knowledge. Courts of equity may, and frequently do, go much farther both to give and withhold relief in furtherance of the public interest than they are accustomed to go when only private interests are involved."

In answer to the contention that the Norris-LaGuardia act controlled, the court said, 300 U. S. at page 563, 57 S. Ct. at page 607:

"It suffices to say that the Norris-LaGuardia Act can affect the present decree only so far as its provisions are found not to conflict with those of section 2, Ninth, of the Railway Labor Act (45 U. S. C. A. § 152, subd. 9), authorizing the relief which has been granted. Such provisions cannot be rendered nugatory by the earlier and more general provisions of the Norris-LaGuardia Act."

(12) Insofar as the Railway Labor Act, as we now interpret it, authorizes the issuance of injunctions to prevent strikes over minor disputes, it operates to *repeal* the provisions of the Norris-LaGuardia act, to the extent that the wording thereof might otherwise be said to apply to such railway labor disputes. It follows that, in the case at bar, the district court has jurisdiction to entertain plaintiffs' prayer for injunctive relief.

3. The correctness of the conclusions which we have reached in this case is supported by the legislative history of the Railway Labor Act.^{*}

For the reasons herein set forth, the order from which an appeal has been taken is reversed and the cause is remanded to the district court with instructions to take further proceedings not inconsistent with the views herein expressed.

^{*} See: statement of Mr. Harrison, ante page 5 [930 p. of 229 F.2d]; Elgin, J. & E. R. Co. v. Burley, 325 U.S. 711, at pages 721-729. 65 S.Ct. 1282, 89 L.Ed. 1886; hearings before the Senate Committee on Interstate Commerce, 73d Cong., 2d Sess. (1934) on S. 3266; hearings before the House Committee on Interstate and Foreign Commerce, 73d Cong., 2d Sess. (1934) on H. R. 7650; Senate Report No. 1065 (73d Cong., 2d Sess.); House Report No. 1944 (73d Cong., 2d Sess.) and 78 Cong. Rec. 11710-11720, 12083, 12375.

APPENDIX II.

Brotherhood of Railroad Trainmen v. Chicago River and Indiana Railroad Co., et al., No. 11745, United States Court of Appeals for Seventh Circuit, entered May 17, 1956.

Upon the motion of defendants-appellants that this cause be docketed upon the transcript of record heretofore filed and printed in the above-mentioned cause No. 11474 and upon the additional transcript of record filed in this cause No. 11745, and that it may be considered and decided upon briefs, oral arguments, petition for rehearing and answer to petition for rehearing filed in cause No. 11474, which motion is supported by stipulation signed by both defendants-appellants and plaintiffs-appellees, and it appearing that, following our reversal in case No. 11474 of the district court's order dismissing the above entitled suit and for remandment, said district court proceeded upon remandment and rendered findings of fact, conclusions of law, and a judgment for injunction in accordance with the views expressed in this court's opinion in No. 11474, and that the defendants-appellants have saved but two of the questions originally raised by the proceedings below, waiving all other questions of fact or law, to-wit:

- "(1) Was it the Congressional intent of the National Railway Labor Act to prohibit the threatened strike involved in this case which concededly, if accomplished, would have involved only demands with respect to 'minor grievances?'
- (2) If the National Railway Labor Act was intended to prohibit the above-mentioned threatened strike, did it so far repeal the Norris-LaGuardia Act as to authorize or compel the District Court to grant an injunction?"

And it further appearing that all of the parties hereto represent to this court that they have no arguments to present other than those presented in No. 11474, but that defendants-appellants ask this court to reconsider and rescind its former holding, and the court being fully advised on the premises, IT IS ORDERED, ADJUDGED

AND DECREED that this court refuses to reconsider and rescind its former holding in No. 11474, and hereby adheres to said holding. The court finds that the district court, upon remandment, proceeded in accordance with the order of remandment, and that no error occurred in the proceedings below upon remandment.

Accordingly, IT IS ORDERED, ADJUDGED AND DECREED that the judgment of the district court, of March 15, 1956, from which this appeal was taken, be and the same is hereby affirmed.

IT IS FURTHER ORDERED that pursuant to the stipulation of the parties hereto, there shall be filed in this appeal No. 11745, in addition to the transcript of record now on file therein, the transcript of record heretofore filed in case No. 11474.

APPENDIX III.

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND INJUNCTION.

This cause coming on to be heard, and the Court having considered the verified Amended Complaint heretofore filed in this case, the defendants' answer and motion to dismiss, and the plaintiffs' motions with affidavits attached, does find the facts and conclusions as to the law as follows:

Findings of Fact.

1. Plaintiffs are corporations organized and existing under and by virtue of the laws of various of the States of the United States. Plaintiffs are common carriers by railroad and are subject to the Railway Labor Act, 45 U. S. C. § 151 *et seq.* Plaintiff, The Chicago River and Indiana Railroad Company (hereinafter called the "River Road") is a corporation organized and existing under and by virtue of the laws of the State of Illinois and is a common carrier by rail and operates a line of railroad serving the Union stockyards, Chicago, Illinois, and serves at Chicago, Illinois the lines of railroad of the other plaintiffs.

2. The defendant Brotherhood of Railroad Trainmen is a voluntary organization and is a labor organization

within the meaning of the Railway Labor Act, which is, and at all times material hereto has been the recognized and acting collective bargaining agent for all of the River Road's employees who are classified as yard foremen and yard helpers (including switch tenders). The Brotherhood of Railroad Trainmen consists of a Grand Lodge and many subordinate Local Lodges, and has its principal business office in Cleveland, Ohio.

3. The defendant Brotherhood of Railroad Trainmen, Lodge No. 964, is a local lodge of the Brotherhood of Railroad Trainmen with headquarters at Chicago, Illinois.

4. Defendants Felix E. Kazmer, Michael V. Smalley, and George C. Hofer are officers of Lodge No. 964, and defendant W. M. Dolan is vice president of the Brotherhood of Railroad Trainmen. They fairly and adequately represent their organizations and the members thereof.

5. In the conduct of its business the River Road employs a class of employees, among others, generally referred to as yard foremen and yard helpers (including switch tenders) whose duties, generally stated, are the handling and controlling of the movement of railroad cars and trains over the rails of plaintiff. Plaintiff cannot operate its railroad without the performance of these duties. These employees are all members of or represented by the Brotherhood of Railroad Trainmen and Lodge No. 964, and the River Road has recognized the Brotherhood of Railroad Trainmen as the collective bargaining agent for these said employees.

6. For many years prior to the claims and grievances hereinafter referred to and continuing up to the present time, rules and working conditions pertaining to the classes of employees known as yard foremen and yard helpers (including switch tenders) were determined by contracts between plaintiff and the Brotherhood of Railroad Trainmen entered into from time to time.

7. The River Road and the defendants have at all material times in question, and for many years prior thereto handled claims and grievances concerning individual employees of the classes mentioned in accordance with the various agreements and in accordance with the provisions of the Railway Labor Act. Among the claims and grievances presented to this plaintiff for disposition were nineteen

claims for additional compensation, one claim for reinstatement of a discharged employee, and one claim for reinstatement of an employee to the position of yard foreman. These grievances, disputes and claims were handled on the property of this plaintiff in accordance with the various agreements between plaintiff and defendants, and in accordance with the provisions of the Railway Labor Act. All twenty-one claims above referred to were submitted to the superintendent of the River Road, an officer designated to handle such cases, who considered and ultimately denied each of the twenty-one claims. Each of the said twenty-one claims was appealed to the General Manager of the River Road, who was designated as the highest officer to handle such claims under the Railway Labor Act. The said twenty-one claims were heard and considered at various times and were denied by the said officer on various dates between December 20, 1949 and September 4, 1953.

8. Defendants heretofore called a strike for six A. M. Monday, June 7, 1954, in order to coerce the River Road into meeting the demands contained in the said twenty-one grievances and claims. The said strike was postponed when the National Mediation Board proffered its services. The efforts of the National Mediation Board to mediate these disputes failed, whereupon the National Mediation Board withdrew on July 15, 1954. In the meantime the River Road submitted, pursuant to the terms of the Railway Labor Act, each of the said claims to the First Division of the National Railroad Adjustment Board, which has not yet rendered a decision on any of them.

9. The defendants, and each of them, have threatened an immediate strike of all employees of the classes of yard foremen and yard helpers (including switch tenders).

10. The said strike threat, if carried into effect, would paralyze the River Road's operation and prevent the transportation of persons and property over it. The purpose of said strike is to force this plaintiff, by the use of self-help by defendants and the employees represented by them, to settle grievances or claims for compensation without submitting such disputes or grievances to the National Railroad Adjustment Board.

11. Uninterrupted services of the River Road's yard foremen and yard helpers are essential to the operation of

its railroad. A stoppage of operations would cause this plaintiff thousands of dollars damages daily and would require it to lay off approximately 1100 employees who would lose an aggregate amount of money in excess of Twelve Thousand Dollars (\$12,000) wages daily for each day of such strike or stoppage. This plaintiff will be compelled to embargo shipments, including perishable foodstuffs, into and out of the stock yards in Chicago, which will immediately cause irreparable damage to the 600 industries and 27 railroads served by it. These 27 railroads, which are the other plaintiffs herein, will incur thousands of dollars of damages for each day the strike is in effect. The adverse effects upon business and the public generally will cause hundreds of thousands of dollars damage each day the strike is in effect.

12. The River Road has attempted to settle with defendants the 21 grievances and claims which underlie the threatened strike or work stoppage through negotiation and through the mediation efforts of the National Mediation Board. Defendants refused to submit the grievances to the National Railroad Adjustment Board and refused to join with the carrier in its submission.

13. The amount in controversy exceeds the sum of Three Thousand Dollars (\$3,000), exclusive of interest and costs.

Conclusions of Law.

Under the foregoing findings of fact, the Court concludes that:

1. The cause of action here asserted by plaintiffs is one arising under the laws of the United States regulating commerce; and the Court has jurisdiction of the parties and subject matter of said cause under 28 U. S. C. 1331 and 1337.

2. The Complaint herewith states a claim upon which relief should be granted.

3. Plaintiffs, defendants and plaintiffs' employees represented by defendants are subject to the Railway Labor Act, the general purposes of which are, among other things, to avoid any interruption to commerce or to the operation of any carrier engaged therein, and to provide for the prompt and ordinary settlement of all disputes growing out of

grievances or out of the interpretation or application of agreements covering rates of pay, rules or working conditions.

Congress has established compulsory administrative machinery under the Railway Labor Act whereby parties to a collective bargaining agreement are required to submit such controversies as are here involved to the National Railroad Adjustment Board or to a proper court or board without resorting to self-help.

4. It is the public policy of the United States stated in Section 2, First, of the Railway Labor Act, that it shall be the duty of all carriers, their officers, agents and employees, to exert every reasonable effort to make and maintain agreements concerning rates of pay, rules and working conditions, and to settle all disputes whether arising out of the application of such agreements or otherwise, in order to avoid any interruption to commerce or to the operation of any carrier growing out of any dispute between the carrier and the employees thereof. An interruption of commerce or an interruption of the operations of the plaintiffs by strike or stoppage, called, led or participated in by defendants pending final and ultimate decision by the National Railroad Adjustment Board would constitute a violation of said public policy. The purpose of the strike threatened by defendants is to force the River Road, by the use of self-help by defendants and the employees represented by them, to settle grievances or claims for compensation without submitting such grievances or claims to the National Railroad Adjustment Board, all of which is contrary to law.

5. Defendants and each of them by their threatened actions are in violation of the Railway Labor Act. The defendants and each of them have failed to exhaust remedies available to them under the Railway Labor Act for the handling and final disposition of the above claims.

6. This cause does not involve a labor dispute within the meaning of the Norris-LaGuardia Act (29 U. S. C. 101 *et seq.*) and this Court has not been deprived of jurisdiction to grant the relief requested herein.

7. Even if this cause did involve a labor dispute within the meaning of the Norris-LaGuardia Act, this Court has jurisdiction to enjoin the threatened acts for the purpose of enforcing the mandatory provisions of the Railway Labor Act.

8. Plaintiffs have no adequate remedies at law and will suffer irreparable harm and injury unless awarded injunctive relief. The equity powers of this Court are adequate to afford the relief sought herein and should be exercised in these circumstances.

9. A permanent injunction should be issued enjoining defendants, their agents, servants, and all acting by, through, or for them, or on their behalf, from conducting any strike, stoppage, or other active economic coercion to force or coerce the River Road into settling the claims, grievances and disputes herein referred to which have been filed with the National Railroad Adjustment Board.

ENTER:

WIN G. KNOCH,
United States District Judge.

March 15, 1956.

IN THE DISTRICT COURT OF THE UNITED STATES

(Caption—54-C-1024)

PERMANENT INJUNCTION.

This matter coming on to be heard, and the Court having considered the verified Amended Complaint heretofore filed in this case, the defendants' answer and motion to dismiss, plaintiffs' motions with affidavits attached, and the arguments of counsel and the entire record herein, and the Court having made findings of fact and conclusions of law,

NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that defendants, members of defendants' organization and its officers, their agents, servants, employees and attorneys, and all persons including all yardmen, yard foremen and switchmen employed by the Chicago River and Indiana Railroad Company on its railroad, and any persons in active concert and participation with them, and all persons acting by, with, through and under them, or by or through their order, be and they are hereby enjoined from, in connection with the grievances now pending in the National Railroad Adjustment Board:

1. Calling, ordering, authorizing, encouraging, inducing, approving, continuing, starting or permitting any strike or collective work stoppage on that plaintiff's railroad.

2. Picketing or bannering any of the premises on which that plaintiff conducts its railroad operations.

3. Interfering with ingress to or egress from said premises.

4. Interfering in any manner with delivery, loading, unloading, dispatch or movement of any of that plaintiff's rolling stock, engines, cars, equipment or trains or any of the contents thereof.

5. In any manner interfering with or inducing or endeavoring to induce any person employed by that plaintiff from performing his work and duties and from in any manner endeavoring to induce any such employee to desist therefrom.

Nothing herein shall be construed to require an individual employee to render labor or service without his consent, nor shall anything herein be construed to make the quitting of his labor by an individual employee an illegal act.

ENTER:

WIN G. KNOCH,

United States District Judge.

APPENDIX IV.

**BROTHERHOOD OF RAILROAD TRAINMEN, LOCAL
LODGE NO. 721, et al., Appellants,**

v.

**CENTRAL OF GEORGIA RAILWAY COMPANY,
Appellee. 229 F. 2d 901.**

Before HUTCHESON, Chief Judge, and BORAH and BROWN,
Circuit Judges:

HUTCHESON, Chief Judge.

Brought by their employer in the midst of a labor dispute, against the named defendants and the class of employees represented by them, the suit was for: (1) a temporary injunction restraining them *pendente lite*, from endeavoring by self help to effect a modification or change of an arbitration award known as the Cheney Award and from calling and putting into effect a strike because of plaintiff's refusal to acquiesce in their demands; (2) a judgment declaring the award final and binding and not subject to modification and change; and (3) a final order making the injunction permanent.

The claim was: that, though in compliance with the decision of the Supreme Court of Georgia,¹ that it should do so, and pursuant to the Railway Labor Act, 45 U. S. C. A. § 151 *et seq.*, plaintiff had submitted the controversy between it and the defendants over the Cheney Award to the National Railroad Adjustment Board, the defendants had demanded that a modification of the award be negotiated and had given formal notice that a strike of the employees was being set subject to a satisfactory settlement; that the strike date was once postponed at the intervention of the National Mediation Board, but the mediator had advised plaintiff that his services were fruitless; that the defendants will not agree to leave the matter in status quo pending a decision of the controversy by the National Adjustment Board, and have called a system wide strike against plaintiff to coerce it to adopt defendants' interpretation of the award; and that if

¹ Central of Georgia Ry. Co. v. Brotherhood of Railroad Trainmen, 211 Ga. 263, 85 S. E. 2d 413.

the strike becomes effective it will completely close down plaintiff's operations with resulting irreparable injury.

The defendants filed a motion to dismiss² for want of jurisdiction on the ground, among others, that the petition shows on its face that plaintiff is seeking an injunction in the face of, and contrary to, the Norris-LaGuardia Act, Secs. 101-115, Title 29.

This motion denied and a hearing had, the district judge concluding: that the Norris-LaGuardia Act was not intended by Congress to deprive a district court of jurisdiction to prevent irreparable injury by maintaining the status quo in respect to a controversy which is pending before the National Adjustment Board; and that it was necessary to preserve the status of the controversy now before the Board; granted the preliminary injunction as prayed, enjoining defendants from striking, work stoppage, picketing, or any similar device.

Appealing from the order denying its motion to dismiss, for want of jurisdiction, and the order granting the injunction appellants, presenting four questions³ for our de-

¹ "Now comes the Brotherhood of Railroad Trainmen, et al, defendants in the above-entitled cause, and moves the court as follows:

"1. To dismiss the action because the petition fails to state a claim against the defendants upon which relief can be granted.

"2 To dismiss the action because the petition shows on its face that the Court is without jurisdiction of the subject matter.

"3 To dismiss the action on the grounds that the Court lacks jurisdiction because the petition shows that the plaintiff has not exhausted its administrative remedy.

"4 The petition shows upon its face that plaintiff is seeking an injunction under circumstances that are prohibited by the laws of the United States, to-wit, the Norris-LaGuardia Act, Title 29, Sections 101-115 and seeks no other relief."

² These are:

"First. Where all of the requirements of the Norris-LaGuardia Act met so as to authorize an injunction under the facts here involved?

"Second. Did the railway carrier first exhaust its administrative remedies available under the Railway Labor Act so as to authorize an injunction under the facts here involved?

"Third. Is a demand for a change in rates of pay, rules or working conditions, pursuant to the Railway Labor Act, Sec. 6, a justiciable issue and basis for an injunction under the facts here involved?

"Fourth. Did the arbitration award in question conclude and thus prevent negotiation of the demand given by the Brotherhood to the Carrier pursuant to the Railway Labor Act, for compensation for coupling so as to authorize an injunction under the facts here involved?"

cision, thus summarize their principal argument for reversal:

"In both the overruling of the motion to dismiss the carrier's complaint and in issuing the temporary injunction against the Brotherhood defendants, the trial court violated the Norris-LaGuardia Act. These violations were numerous, repeated and substantial. Duty and candor compel us to say they were also flagrant. Any one of those violations controls and should alone decide the case. Therefore, we shall treat this feature first, before taking up the additional reasons for reversal."

"The policy of the Act as set forth in Section 102 prevades all of its provisions. It was passed primarily to protect labor, not management. By doing so, it was hoped that all industry, labor and management, would be benefited ultimately and thus that the Act would be in the public interest."

(1) We agree with the appellants that this is so. In the *Carter* case, *Carter v. Herrin Motor Freight Lines*, 5 Cir., 131 F. 2d 557, 560, where the suit was for an injunction, the court upheld the injunction as to those acts which dealt with such violations as trespassing, injuring property, intimidating, or threatening customers, molesting, assaulting, or intimidating employees, but reversed the injunction in respect of all matters which could be construed as prohibiting acts which the statute allows. Saying:

"The language of the act is too plain and the decisions construing it too clear cut and positive to admit of any doubt that the purpose and effect of the act, as a whole, was to give expression to, and make effective, the policy which breathes throughout it. This policy is that labor disputes, as such, with the assembling, the picketing, the persuasion, the stopping of work, the enlisting of sympathy and support, and all the other acts expressly enumerated in Sec. 104, were no longer to be the subject of injunctive action but were, and were expressly recognized to be, legitimate means for advancing the interests of the working man, and, therefore, of the people as a whole. In the light of that policy, which can be made fully effective only when there is a recognition on the part of employer and employee alike that labor disputes as such are not all reprobated but encouraged,

and only violence in connection with them is forbidden

the court went on to hold that the use of injunctions in labor disputes, except for the limited purpose of preventing injury from violence where there was really no adequate remedy at law, was an abuse of legal process.

(2) In the face of the imperative language of the section, appellee's contention, that the act is not applicable because what was sought to be enjoined was action in breach of a contract embodied in the Cheney Award, is wholly untenable. The same contention has been rejected in case after case holding that the statute requires a contrary ruling.

(3) Nor may appellee find better support for the injunction in its claim that the purpose of the strike and its effect would be to do violence to statutory procedures embodied in the statute for a disposition of controversies by the Railroad Adjustment Board. For, as has been held time and again, the purpose of the strike, whether it is or is not illegal, is not a limitation upon the prohibitions of the statute. Cf. *Wilson & Co. v. Birl*, 3 Cir., 105 F. 2d 948, and *East Texas Motor Freight Lines v. International Broth. of Teamsters*, 5 Cir., 163 F. 2d 10, where this court held that such a contention was an attempt to enlarge Federal Court jurisdiction as limited by the act. Cf. also *Milk Wagon Drivers' Union, etc. v. Lake Valley Farm Products*, 311 U. S. 91, 61 S. Ct. 122, 85 L. Ed. 63, and 43 C. J. S., Injunctions, § 147, p. 748 and 29 A. L. R. 2d 360.

(4) In this view it is not necessary for us to determine whether, as contended by appellees, the strike, if called, would be violative of the Railway Labor Act, upon the theory either that it would violate the contract providing for the Cheney Award, or that it would violate the spirit and

* "No court of the United States shall have jurisdiction to issue any restraining order or temporary or permanent injunction in any case involving or growing out of any labor dispute to prohibit any person or persons participating or interested in such dispute (as these terms are herein defined) from doing, whether singly or in concert, any of the following acts: (a) Ceasing or refusing to perform any work or to remain in any relation of employment;" (d) Aiding any persons involved in any labor dispute; (e) Giving publicity of any labor dispute; (f) Assembling to promote their interests; (g) Advising as to any of the acts heretofore specified; and (h) Agreeing with others to do or not to do any of the acts heretofore specified and (i) Causing or inducing without fraud or violence the acts heretofore specified, regardless of any such undertaking or promise as is described in Sec. 103. 29 U.S.C.A. § 104.

purpose of the Labor Act to conduct a strike while the issue which brought it about was pending before the Adjustment Board with jurisdiction to decide it. This is so because the fundamental weakness of appellees' position is that there is no express provision in the Labor Act in any way limiting the scope and operation of the prohibitions of the LaGuardia Act, and the claim of implied repeal because of a necessary conflict between the two acts is not borne out by a consideration of the language of the two acts either apart from or in connection with their legislative history.

It is true that the Railway Labor Act does contemplate that every reasonable effort will be made to maintain agreements and to avoid interruption to commerce, and that it contemplates that disputes be considered, and, if possible, decided expeditiously by negotiation and that if disputes over grievances are not adjusted on the property, they may be referred by both or either of the parties to the Adjustment Board. It is equally true, however, that none of the sections mandatorily provide that disputes must be submitted to the board rather than being handled by the voluntary methods provided for in the same act.

If, as appellee contends, Congress had, shortly after the passage of the Norris-LaGuardia Act, intended to curtail its provisions, limiting the equity jurisdiction of the courts in labor disputes so as to subject strike action to injunction, it is inconceivable, we think, that it would not have expressly so provided. Indeed, in *General Committee of Adjustment, etc. v. Missouri-Kansas-Texas R. Co.*, 320 U. S. 323, 64 S. Ct. 146, 88 L. Ed. 76, the Supreme Court expressly held that the Mediation Board's determination of such a controversy was not justiciable. In the light of that decision, appellee is under a burden too heavy to be borne when it seeks to justify the judicial remedy sought and obtained here by invoking a jurisdiction which the Norris-LaGuardia Act expressly withdraws from the Federal Courts.

In short, all that is for decision on this appeal is whether the Railway Labor Act has expressly or impliedly repealed the provisions of the LaGuardia Act, denying jurisdiction to courts to enjoin strikes or work stoppages. Unless, therefore, it can be found that there has been such repeal, it is wholly unnecessary to determine whether, as appellee claims, the adjustment board has jurisdiction over the dis-

pute or, as appellants claim, it does not have. Equally immaterial is the question whether the issue before the Adjustment Board is the same as that involved in the present case.

(5) Further, appellee's contention, which prevailed with the district judge below and which it presses here, that the suit falls within the language of the LaGuardia Act making an exception to the grant of an injunction in situations where unlawful acts have been threatened and will be committed unless restrained, is wholly untenable. It is plain from the language and the context that the words "unlawful acts" mean violence, breaches of the peace, criminal acts, etc.; and that such terms do not include, they do not constitute a general reference to, anything that may be considered illegal but apply specifically to the acts of violence which authority is calculated to control. *Wilson & Co. v. Birl and Carter v. Herrin Motor Freight Lines, supra. Cf. 43 C. J. S., Injunctions, § 138, p. 702 and cases cited.*

The complaint did not allege that any such violence was threatened or feared, indeed it was carefully framed with the purpose and intent, if possible, to plead a case not within but without the Norris-LaGuardia Act. The statement of the district judge in Finding 33, with reference to the degree of damage depending on the destruction and violence of the strike, and in Finding 34, with reference to the carrier's being threatened with unlawful acts by the defendants which would result in damage to its property, did not constitute findings that physical violence had been threatened and would be committed, and, if they were intended to be such, they are without any support either in the pleadings or in the evidence. Neither was there allegation or supporting proof that police officers were unable or unwilling to furnish adequate protection.

In view of these conclusions, it is unnecessary for us to consider the points made by appellants that the carrier's own conduct in failing (1) to sincerely negotiate, (2) to apply for mediation, and (3) after mediation had begun to proceed with it, and (4) to exhaust its remedies before the Adjustment Board before resorting to suit, was such as to preclude it, under Section 108 of the Act, from seeking an injunction.

Finally, because of our expressed views that this case is one arising under the Norris-LaGuardia Act and the dis-

strict court was without jurisdiction to proceed in it, we do not reach the last question dealt with in appellants' brief, whether the fault in respect of the Cheney Award was the carrier's rather than the employees'.

(6) Appellee concedes that the basic and principal question on this appeal is whether or not the Norris-LaGuardia Act prohibits the district court in this case from taking jurisdiction and granting the pendente lite relief prayed. Conceding, too, that this is a case of first impression in any United States Court of Appeals, it urges upon us that the nature of the relief asked differentiates this case from all others and takes it out of the provisions of the Norris-LaGuardia Act, limiting the jurisdiction of the district court and directing its exercise. In emphasis of this argument, the appellee insists that it did not seek to have the dispute in question settled by the district court, that it sought merely to maintain the status quo pending the decision of the question by the Adjustment Board.

Assuming that this is a correct statement of its pleadings, and treating its argument as directed to the fact that the injunctive action granted was limited, we think it plain that this makes no difference. The decisive, the fundamental questions here are, was this a labor dispute and did the suit seek to prevent by injunction what the act denies the court the power to prevent, and the answers to the questions must be in the affirmative.

The judgment is, therefore, reversed, and the cause is remanded with directions to dismiss the suit for want of jurisdiction.

BROWN, Circuit Judge (dissenting).

The Railroad, by complaint,¹ sought and the court granted

¹ The majority opinion states that the suit was for "(2) a judgment declaring the award final and binding and not subject to modification and change: * * *." With deference I do not so construe the record. In paragraph 30 of the complaint, the injunction sought is carefully restricted to "pending a determination of this controversy by the National Railroad Adjustment Board" and in the Prayer, that an injunction be issued restraining Brotherhood from "endeavoring to negotiate or * * * demanding a rule * * * prescribing extra compensation * * * for coupling and uncoupling air, steam or signal hose; * * * from calling a strike, work stoppage * * * directly or indirectly * * * because of * * * any feature of the controversy * * * described which has been referred to the National Railroad Adjustment Board * * * from endeavoring to negotiate a cancellation, change, modification or revision of the Award of Referee George Cheney * * * until the consideration

an injunction² against the threatened, imminent strike by the Brotherhood pending the determination by the Railway Adjustment Board of the question submitted to it by the Railway of whether the Cheney Award decided "once and for all" the question of whose duty was the job of coupling and uncoupling steam and air hose, as claimed by the Railroad, or, as claimed by Brotherhood, was temporary in nature and open for negotiation.³ No declaratory relief or

of this controversy by the machinery of the National Railroad Adjustment Board has been exhausted in accordance with the provisions of the Railway Labor Act * * *. The Brotherhood's brief before us described the complaint and Prayer, (page 2). "It prayed for temporary restraining order, temporary injunction, and permanent injunction, enjoining a threatened strike because of attempts by the Brotherhood to re-negotiate for pay for coupling."

¹The Decree carefully recites the purpose to be: "in order to preserve the status quo of the controversy now before the National Railroad Adjustment Board, * * *:

"Pending further order * * * and * * * a final hearing * * * the [Brotherhood] and others * * * are * * * enjoined * * * from threatening to or from calling a strike, work stoppage, or picketing * * * or from using any similar device * * * against the * * * Railway Company, and from striking, stoppage of work, picketing * * * in an effort to or designed or intended:

"A. To compel [Railroad] to agree with [Brotherhood] to a cancellation, modification, change or revision of the * * * Cheney [Award]. * * *: or

"B. To compel the [Railroad] to agree to or to consummate a rule * * * inconsistent with the Cheney Award * * *: or

"C. To compel [Railroad] to agree to or to consummate a contract * * * prescribing extra compensation * * * for uncoupling air, steam * * * hose * * * inconsistent with the * * * Cheney Award.

* * * * *

"This order is not to be construed as effecting any action of the [Brotherhood] in any particular, except as actions may involve the controversy now before the National Railroad Adjustment Board; and is also not to be construed as inhibiting a voluntary settlement of this dispute."

²The Cheney Award, seeking to resolve the provocative controversy raging since 1887 with the advent of the Westinghouse Air Brake, grew out of the impasse in the 1950 Railway-Brotherhood negotiations with its threat of a nation-wide strike of all Class I Railroads with the devastating consequences to the nation's economy and security. The Mediation Board, under the Railway Labor Act, attempted unsuccessfully to produce agreement or persuade the parties to arbitrate. Under the Act, the President of the United States appointed an Emergency Board whose findings the Brotherhoods declined to accept, requesting instead that the President take control of the Railroads. In December 1950, after extended Presidentially sponsored conferences, agreement was reached on all but a limited number of issues, then specified, including coupling

interpretation of the Cheney Award was sought or obtained.

At the outset, I am in complete agreement that, if the Norris-LaGuardia Act, 29 U. S. C. A. § § 101-115, applies, the Railroad has not met its terms and the injunction, even though limited, ought not to have been granted. Similarly, I concur that the mere fact that the strike involved some violation of law or is in breach of contract does not remove the controversy from the sweeping prohibition of that Act. *Wilson & Co. v. Birl*, 3 Cir., 105 F. 2d 948; *East Texas Motor Freight Lines v. International Broth. of Teamsters*, 5 Cir., 163 F. 2d 10; *Carter v. Herrin Motor Freight Lines*, 5 Cir., 131 F. 2d 557; *Milk Wagon Drivers' Union, etc. v. Lake Valley Farm Products*, 311 U. S. 91, 61 S. Ct. 122, 85 L. Ed. 63.

But here injunction was sought and granted not because the contract forbade a strike, or to negotiate with the pressure of threatened strike was a violation of the contract, but rather because the contention and countercontention of the effect and significance of the contract (Cheney Award) was itself a "dispute [] between an employee or group of employees and a carrier * * * growing out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions * * *", 45 U. S. C. A. § 153, First (i), the determination of which is committed exclusively, where voluntary negotiations fail as

of steam-air hoses. On May 25, 1951, all issues, except two were settled, one being coupling air hoses, and on that date the parties agreed to submit the issue to a Presidentially appointed Referee, (George Cheney was nan .) "the decision of the Referee shall be final and binding on the parties, and shall become effective * * *."

On November 28, 1953, the Brotherhood, under 45 U.S.C.A. § 156 made demand for contract changes, including pay increases for air-steam coupling. Threatened with strike over the issue and mediation failing, the Railroad filed in the Georgia State Court a suit for declaratory judgment under the Cheney Award declaring it final and binding and seeking injunction to effectuate it. The Railroad asserted below that Brotherhood contended, and the Supreme Court of Georgia agreed, that the State "Court is without jurisdiction * * * and * * * the matters involved are within the jurisdiction of the National Railroad Adjustment Board exclusively under Title 45, § 153 [First] (i) * * *." *Central of Georgia Ry. Co. v. Brotherhood of Railroad Trainmen*, 211 Ga. 263, 85 S.E. 2d 413, 414. Immediately, the Railroad submitted the controversy to the Railroad Adjustment Board. Then followed, in January and February 1955, the renewed demands for negotiation by the Brotherhood, the strike notices, efforts at mediation and submission to arbitration. The Railroad claimed, and the trial court found, that the Brotherhood was unwilling to allow the question of the extent, nature and effectiveness of the Cheney Award to be decided by the Railroad Adjustment Board and, a system-wide strike being imminent, an injunction was issued to permit it to be determined by the Adjustment Board.

they did here, to the National Railroad Adjustment Board. And if the controversy was one for the Railroad Adjustment Board, then the refusal of the Brotherhood, and its members, to allow the statutory course to be followed, and its interference in that process by a system-wide strike designed to force the issue on the very controversy before that tribunal, became, not a mere violation of a general law (unavailable as an escape from Norris-LaGuardia), but an absolute violation of the very law designed to regulate and control labor controversies of the kind involved.

Ignoring this latter point with an undue preoccupation with artificial concepts of partial repeal or implied repeal of Norris-LaGuardia is, I think, the defect of the majority opinion. The question is not; which repeals the other, and to what extent? It is rather the problem of frequent necessity in adjudication where two or more statutes, each bespeaking its own major policy, are accommodated and adapted to assure that the total policy reflected by all is effectuated.

This approach, substantiated by abundant authorities, has special merit here. Both statutes are the offspring of a common era, enacted (1932 and 1934) near the same time, with each intended as a major, deliberate and far-reaching change in national labor policy. Neither was intended as the repeal of the other. The enactment of one was not the repudiation of the policy of the other. They exist side by side and where, through the years, they have come into apparent collision, the courts, unfettered by awkward concepts of repeal, have found the way by which now one, now the other, has been found dominant and controlling.

In this light, Federal Courts have never been shackled by Norris-LaGuardia in giving life and force to the mandates of the Railway Labor Act. *Virginian R. Co. v. System Federation*;* *Graham v. Brotherhood of Locomotive Fire-*

*300. U.S. 515, 57 S.Ct. 592, 607, 81 L.Ed. 789; injunction issued to require Railroad to bargain with Union certified by Mediation Board and not to bargain with another; notwithstanding that this controversy met many of the Norris-LaGuardia definitions of a "labor dispute" and the decree issued was of a type forbidden by Section 104, the Supreme Court rejected it as a bar: "It suffices to say that the Norris-LaGuardia Act can affect the present decree only so far as its provisions are found not to conflict with those of section 2, Ninth, of the Railway Labor Act (45 U.S.C.A. § 152, subd. 9), authorizing the relief which has been granted. Such provisions cannot be rendered nugatory by the earlier

men and Enginemen."

Of course, the Railway Labor Act is not a voluntary, free-will mechanism; it is one imposing substantial obligations on the parties, railway management and labor alike; and a court, by injunction, can compel the parties to carry out and effectuate its aims, *Texas and N. O. R. Co. v. Brotherhood of Ry. & S. S. Clerks*, 281 U. S. 548, 50 S. Ct. 427, 74 L. Ed. 1034; *Virginian R. Co. v. System Federation*, *supra*; *Order of Ry. Conductors of America v. Pitney*; *Elgin, Jol-*

and more general provisions of the Norris-LaGuardia Act." Of course, Section 2, Ninth, 45 U.S.C.A. § 152, Ninth, does not, as such, authorize injunctions.

* 338 U.S. 232, 240, 70 S.Ct. 14, 17, 94 L.Ed. 22; injunction affirmed against a union forbidding unlawful discrimination toward non-members. "The respondent [Brotherhood] has strenuously urged throughout that in view of the provisions of the Norris-LaGuardia Act * * * the District Court was without jurisdiction to grant relief by injunction. * * * But this is not a question of first impression. In *Virginian R. Co. v. System Federation*, 300 U.S. 515, 57 S.Ct. 592, 81 L. Ed. 789, we held that the Norris-LaGuardia Act did not deprive federal courts of jurisdiction to compel compliance with positive mandates of the Railway Labor Act, 45 U.S.C.A. § 151 et seq., * * * enacted for the benefit and protection within a particular field, of the same groups whose rights are preserved by the Norris-LaGuardia Act. * * * We adhere to the views expressed in the *Virginian* case. But the Brotherhood urges that the controversy in the *Virginian* case did not involve a labor dispute within the meaning of the Norris-LaGuardia Act and that accordingly that case must be distinguished on its facts. * * * We do not accept the Brotherhood's invitation to narrow the meaning of that term. * * * Moreover, if this Court had considered that a labor dispute was not involved, it would hardly have taken the trouble, in the *Virginian* case, to refute contentions based upon parts of the Act, which as a whole extends its protection solely to such disputes. * * * If, in spite of the *Virginian*, *Steele* [*Steele v. Louisville & Nashville R. Co.*, 323 U.S. 192, 65 S.Ct. 226, 89 L.Ed. 173], and *Tunstall* [*Tunstall v. Brotherhood of Locomotives*, etc., 323 U.S. 210, 65 S.Ct. 235, 89 L.Ed. 187] cases * * *, there remains any illusion that under the Norris-LaGuardia Act the federal courts are powerless to enforce these rights, we dispel it now * * *"

This completely dissipates, I think, the force of the argument of the majority: "If, as appellee contends, Congress had, shortly after the passage of the Norris-LaGuardia Act, intended to curtail its provisions, limiting the equity jurisdiction of the courts in labor disputes so as to subject strike action to injunction, it is inconceivable, we think, that it would not have expressly so provided, * * *." Of course, its emphasis on the prohibition of strikes, as such, ignores, as Justice Jackson pointed out, the wide character of controversies protected and remedies forbidden.

* 326 U.S. 561, 66 S.Ct. 322, 325, 90 L.Ed. 318; dispute over assignment of work on certain trains; one union contending that by virtue of a contract, not negotiated pursuant to Section 6, 45 U.S.C.A. § 156, it was unlawfully given to another. Court recognizes that injunction can issue to compel compliance with the Act, including Section 6, but since question depends on the interpretation of the disputed contract, this was a

iet & E. Ry. Co. v. Burley; Brotherhood of R. R. Trainmen v. Howard," including the resolution of disputes, grievances, and controversies through the administrative machinery of the Adjustment Board set up under the Act."

matter for determination by the Adjustment Board. "Under these circumstances the court should exercise equitable discretion to give that agency the first opportunity to pass on the issue. Certainly the extraordinary relief of an injunction should be withheld, at least, until then. . . . Only after the Adjustment Board acts, but not until then, can it plainly appear that such relief is necessary to insure compliance with the statute. . . ."

' 325 U.S. 711, 720, 721, 65 S.Ct. 1282, 1288, 89 L. Ed. 1886, 1893; the court rejects the contention that an Adjustment Board award amounts to nothing more than an advisory opinion. "The contention, founded upon language of the opinion in Moore v. Illinois Central R. Co., 312 U.S. 630, 61 S.Ct. 754, 85 L.Ed. 1089, regards the Act's entire scheme for the settlement of grievances as wholly conciliatory in character, involving no element of legal effectiveness, with the consequence that the parties are entirely free to accept or ignore the Board's decision.

"At the outset we put aside this broadest contention as inconsistent with the Act's terms, purposes and legislative history. The Moore case involved no question concerning the validity or the legal effectiveness of an award when rendered. Nor did it purport to determine that the Act creates no legal obligations through an award or otherwise. . . . both prior and later decisions here are wholly inconsistent with such a view of its effects . . . 12 . . ." Footnote 12 then states: "Thus, one of the statute's primary commands, judicially enforceable, is found in the repeated declaration of a duty upon all parties to a dispute to negotiate for its settlement. . . . [Citing cases]. This duty is not merely perfunctory. Good faith exhaustion of the possibility of agreement is required to fulfill it. . . . Brotherhood of Railroad Trainmen v. Toledo, P. & W. R. R., 321 U.S. 50, 56, 64 S.Ct. 413, 416, 88 L.Ed. 534 [538] At successive stages of the statutory procedure other duties are imposed. Cf. §§ 5, First (b), 6, 10."

' 343 U.S. 768, 72 S.Ct. 1022, 1026, 96 L.Ed. 1283; "In fashioning its decree the District Court is left free to consider what provisions are necessary to afford these employees full protection from future discriminatory practices of the Brotherhood. However, in drawing its decree, the District Court must bear in mind that disputed questions of reclassification of the craft of 'train porters' are committed by the Railway Labor Act to the National Mediation Board."

' Rolfe v. Dwellingham, 8 Cir., 198 F.2d 591, 593; injunction issued in case involving allocation of work between competing classification of employees, to remain in force pending determination by the National Railway Adjustment Board of the question of jurisdiction involved or for a reasonable time for the waiters to invoke the jurisdiction of the Board. Equitable relief was granted "in aid of the administrative machinery provided for the adjustment of disputes in the Railway Labor Act", . . . and "limited its injunction strictly to the purpose of affording opportunity for the administrative Board to function as contemplated by the Act. . . . The Railway Labor Act contemplates that the Boards which it sets up shall function through process of mediation and interpretation of disputed contracts to minimize conflicts and interruptions of commerce. . . . When the action was found to be wrongful

The national Railway Labor Act is not for labor alone. To be sure it benefits labor greatly, but its underlying purpose is to assure industrial peace in an important phase of our national economy. It is a double-track system; the trains run both ways simultaneously, and when equity can compel a Railroad to comply, *Texas & N. O. R. Co. v. Brotherhood of Ry. & S. S. Clerks*; *Virginian R. Co. v. System Federation*, *supra*, so, too, may it compel obedience by unions, *Brotherhood of R. R. Trainmen v. Howard*; *Graham v. Brotherhood of Locomotive Firemen and Enginemen*, *supra*.

It seems equally plain that a genuine difference over the meaning and effect of a contract is a grievance which must

and violative of the provisions of the Act, it was the duty of the court, and it properly acted, to restore the plaintiffs to their position before the wrongful action was taken against them." Court expressly states that *Graham*, *Virginian*, *Steele*, and *Tunstall* are "equally conclusive that the Norris-LaGuardia Act does not deprive the federal courts of power to issue such an injunction * * * in aid of the administrative Board and to preserve the right of the waiters-in-charge to resort to the administrative procedure provided by * * * the * * * Act."

Missouri-Kansas-Texas R. Co. v. Brotherhood of Railway & S. S. Clerks, 7 Cir., 188 F.2d 302: institution of suits by the Brotherhood to enforce awards on allocation of work between competing classifications enjoined, as awards illegal for want of notice.

Missouri-Kansas-Texas R. Co. v. National Railroad Adjustment Board, D.C. N.D. Ill., 128 F.Supp. 331: injunction issued against Brotherhood and Board to forbid efforts to enforce conflicting, contradictory awards made without adequate notice pending a determination of all of the cases consolidated by further award of the Board.

Brotherhood of R. R. Trainmen v. Templeton, 8 Cir., 181 F.2d 527, certiorari denied 340 U.S. 823, 71 S.Ct. 57, 95 L.Ed. 605, 643: injunction issued against Brotherhood to forbid enforcement of and practices under awards made without adequate notice on allocation of work between competing classifications.

Railway Employees' Cooperative Association v. Atlanta, B. & C. R. Co., D.C. Ga., 22 F.Supp. 510: injunction issued against Railroad prohibiting interference with union selection of bargaining representative pending decision by Railway Labor Board machinery.

Cf. Baltimore & O. R. Co. v. Chicago River & I. R. Co., 7 Cir., 170 F.2d 654, certiorari denied *Brotherhood of R. Trainmen v. Baltimore & O. R. Co.*, 336 U.S. 944, 69 S.Ct. 811, 93 L.Ed. 1101; *Missouri-Kansas-Texas R. Co. v. Randolph*, 8 Cir., 164 F.2d 4.

Union Premier Food Stores v. Retail Food C. & M. Union, 3 Cir., 98 F.2d 821, reversed as moot 308 U.S. 526, 60 S.Ct. 376, 84 L.Ed. 445, presented substantially the same problem under the National Labor Relations Act; injunction was issued against a strike where, in a representation controversy, the employer was neutral and the matter was then awaiting decision by the National Labor Relations Board.

be submitted to and decided by the Railway Adjustment Board, *Slocum v. Delaware, L. & W. R. Co.*; ¹⁰ *Order of Ry. Conductors of America v. Southern Ry. Co.*; 339 U. S. 255, 70 S. Ct. 585, 94 L. Ed. 811, once that procedure has been invoked by one of the parties.¹¹

The legislative scheme for these matters to be first determined by the expertise of the Adjustment Board is completely frustrated if resort by either party to court or any other activity which prevents the free functioning of this machinery is permitted. Requiring the submission of these grievances to the Adjustment Board contemplates the exercise of deliberative judgment in the light of its special industrial experience.

No matter how informal the proceedings might be, or how strange to lawyers and judges the mechanism may function, the whole spirit is that the result is to be an informed judgment. That means that the adjustment machinery must be free to consider the controversy in the light of its inherent merits, free from extrinsic pressures. This deliberation, this exercise of judgment, cannot take place if either of the parties can marshal and deploy pressures and forces, economic or otherwise, which will interfere with or interrupt or, more likely make altogether unnecessary or futile the operation of this machine.

¹⁰ 339 U.S. 239, 70 S.Ct. 577, 579, 94 L.Ed. 795; referring to the Act's purpose to avoid interruption to Commerce, 45 U.S.C.A. § 151a, Court stated: " * * * This purpose extends both to disputes concerning the making of collective agreements and to grievances arising under existing agreements. [Cites *Elgin* case, *supra*.] The plan of the Act is to provide administrative methods for settling disputes before they reach acute stages that might be provocative of strikes. Carriers are therefore required to negotiate with bargaining representatives of the employees. [Cites *Virginian*, *supra*.] The Act also sets up machinery for conciliation, mediation, arbitration and adjustment of disputes, to be invoked if negotiations fail. * * * It was to prevent such friction that the 1926 Act provided for creation of various Adjustment Boards by voluntary agreements between carriers and workers. * * * But this voluntary machinery proved unsatisfactory, and in 1934 Congress, with the support of both unions and railroads, passed an amendment which directly created a national Adjustment Board * * *. The Act thus represents a considered effort on the part of Congress to provide effective and desirable administrative remedies for adjustment of railroad-employee disputes growing out of the interpretation of existing agreements. * * *"

¹¹ *Elgin, Joliet & E. Ry. Co. v. Burley*, 325 U.S. 711, 727, 65 S.Ct. 1282, 1292, 89 L.Ed. 1886, 1896, "Each party to the dispute may submit it for decision, whether or not the other is willing * * *"

A strike, or the threat of a strike, is but one kind of interference with the orderly operation of this mandatory system. If, merely because the union might ultimately strike after a final award by Adjustment Board or decision of Mediation Board, a strike, or threat of strike, can be used initially to thwart consideration or determination it would make the whole procedure futile. Surely, in the establishment of this system, Congress expected that machinery constructed for the purpose of eliminating strikes should have adequate means to control or regulate the force or threat of such action until the statutory device should have had an opportunity to function.

This does not impinge upon the basic policies reflected in the Norris-LaGuardia Act or the elemental rights which seem to inhere in the right to strike. A court of equity is not being used, as was so often formerly the case, to upset the balance or imbalance of competing economic forces in order to give one party, rather than the other, weight or advantage in a private controversy between labor and management. Here a court of equity exerts its power to fulfill the predominant public interest in having provocative (but as here otherwise relatively insignificant) controversies determined by the public agency established by law for that very purpose. In this way the equity court, not ranging on the side of one against the other, adheres strictly to the position of impartial enforcement of law—an imposition on each and both of the duty to use freely, and in good faith exhaust, this statutory machinery for the determination of these controversies.

A real, genuine, spirited disagreement exists as to the meaning, application and effect of the Cheney Award—whether, as claimed by Railroad, it solved the air coupling problem forever, or, as contended by Brotherhood, foreclosed it only during the life of the 1950 contract of which the Cheney arbitration was a part, and, whether, in either case, it would prohibit efforts by the Brotherhood to secure changes in contracts concerning the future. If the Railroad is right, the Brotherhood should be held to the bargain made inducing the Cheney arbitration and award; if the Railroad is wrong, the Brotherhood should be free to negotiate with all the pressures and forces it can marshal.

That controversy is for determination by the machinery of the National Railway Labor Act. The decree permits the machine to work. It was right, in my judgment.

I therefore respectfully dissent.

APPENDIX V.

Informal letter of the District Judge to Counsel, preserved in the record, re. reasons for dismissal of the case.

Gentlemen:

This matter came on to be heard on defendants' motion to vacate temporary restraining order heretofore issued in this cause.

I have devoted a great deal of thought and consideration to the questions raised in connection with this motion, having due regard for the gravity of the matter.

I have had the benefit of your arguments presented verbally and upon briefs and have studied closely all authorities to which reference was made.

It is my considered opinion that the Norris-LaGuardia Act is applicable in the present case and that this Court lacks jurisdiction to grant the relief sought by plaintiffs.

Accordingly an order is being entered this date dissolving the temporary restraining order and dismissing the action.

Yours truly,

WIN G. KNOX,

United States District Judge.

APPENDIX VI.

District Court's original Order of Dismissal.

On motion of the defendants by their counsel it is Ordered that the temporary restraining order heretofore entered herein be and the same hereby is dissolved and it is Further Ordered that this cause be and the same hereby is dismissed.

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IN THE
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OCTOBER TERM, A. D. 1956.

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Petitioners,

vs.

CHICAGO RIVER AND INDIANA RAILROAD COM-
PANY, et al.,

Respondents.

PETITIONERS' REPLY BRIEF.

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PETITIONERS' REPLY BRIEF.

Prefatory Reference To the Briefs of Amici Curiae.

Excellent briefs filed on behalf of the Brotherhood of Locomotive Engineers and the Railway Labor Executives' Association, *amici curiae*, in which compelling use is made of much legislative history, lighten our task in this Reply Brief.

We adopt without repetition the compendium of legislative history encompassed in those briefs.

I.

IT WAS NOT THE PURPOSE OF THE NATIONAL RAILWAY LABOR ACT TO INTERDICT STRIKES OF ANY KIND, WHETHER OVER "MAJOR" OR "MINOR" GRIEVANCES. HAD SUCH PROHIBITION BEEN THE INTENT OF CONGRESS, IT WOULD HAVE FOUND CLEAR EXPRESSION IN THE ACT.

This is not a case that arises from the ambiguous periphery of a statute of which the main intention is clear but as to which marginal cases raise difficulty, as, for instance, is often the case in which Congress has intended to regulate an area of interstate commerce, it being unclear precisely what the boundaries of that area are.

On the contrary, it was, as we not only concede but strongly emphasize, the dominant purpose of the act to prevent strikes in the interstate commerce of railroad.

The question before Congress—and the question was the central question, not a marginal one—was whether the prevention of as many strikes as possible should be accomplished by categorical prohibition of strikes or affording a tribunal whose determinations were to be conclusive as a matter of law without, however, prohibiting strikes on the part of employees who were willing to forego all right of award before such board or in the courts.

This brings us at once to a question of the meaning of the word "compulsory" as used by us in our original brief, in the legislative history, in the briefs of respondents and *amici curiae* and in this Reply Brief.

Since the word "compulsory" is relative in its meaning, we are brought at once to its significance in the context of legislative history.

In petitioners' original brief we have said (pp. 10, 13 and elsewhere) that it was the intent of the Railway Labor Act to afford "attractive *but not compulsory* administrative apparatus for the resolution" of minor grievances. In respondents' brief, the statement is frequently made that resolution of minor grievances by adjustment under the act is "compulsory."

Petitioners' statement that the act is not "compulsory" and respondents' statement that it is "compulsory" in application to minor grievances are not, however, stark contradictions of each other. The word "compulsory" is used in different senses.

In one sense, of course, the act is indeed "compulsory"—that is to say, if a railroad employee refuses to submit to the process of adjustment established by the act, he loses his right to sue in the courts, state or federal, and may (the point is not involved in this case) forfeit valuable contractual rights under his contract.

This "compulsion" is very real.

To this extent, the carriers are correct in their contention that the act is "compulsory" and if our original brief conveys a contrary impression, we correct that impression now.

It does not follow, however, that strikes over minor grievances are made unlawful.

An incisive analogy makes our point clear:

Most State Workmen's Compensation laws are "compulsory" in the sense that an injured workman who does not avail himself of their provisions has no remedy in the courts or before any other administrative tribunal. In this sense such laws are "compulsory"—that is, they leave the employee no forum other than the statutory commission in which to assert and recover upon his claim. But such stat-

utes, we submit, do not prohibit expressly or impliedly, strikes to compel settlements of claims. The members of a local chapter may refuse to work in the future unless provision is made for injuries sustained by members in the past.

Indeed, so effective is the "compulsory" force of the Railway Labor Act that its object, the discouragement and minimization of strikes over all types of grievances, has been achieved with eminent success. Railroad employees do not lightly forego their own pay envelopes in order to vindicate the particular claims of fellow members.

But the question before the court in this case is not whether the act is "compulsory" in the sense of affording a tribunal whose jurisdiction is exclusive and whose determination are conclusive. The question is whether the Railway Labor Act prohibits the right to strike over minor grievances.

Respondents do not because they cannot refute petitioners' demonstration that the question whether strikes should be prohibited was in sharp focus, not in the penumbra, of Congressional attention when the Act was under consideration.

In the legislative hearings (House Committee on Interstate and Foreign Commerce, 73rd Cong. 2nd Sess. on H. R. 7650) at page 61, is reported the following colloquy between Congressman Wolverton and Commissioner Eastman:

"Commissioner Eastman: . . . Now, *the only question I am in doubt about is whether or not there should be an injunction under this Act to prevent a strike. Now, I am not clear about that.*

"Mr. Wolverton: Do you think that there should be such a provision in the bill?

"Commissioner Eastman: *I would rather see it carried out without that, because I do not believe you are going to have that question arise.*

"Mr. Wolverton: Do you consider it better policy to leave it out—

"Commissioner Eastman: Well, no particular question has been raised about this matter of enforcement. p. 62:

"Mr. Wolverton: *Let us first have a frank understanding as to whether it [a prohibition against strikes] is included or is not included in the bill and then we can determine the policy as to whether it should be or should not be in the bill; but it certainly seems to me that the bill ought not to be left indefinite either from the standpoint of the carriers or the standpoint of the employees. We should know just what the situation is.*"

The truth is that Congress, although its attention was explicitly called to the question of whether strikes should be prohibited, deliberately refused to include such a prohibition in the bill that passed.

It is not enough to say, as respondents say, that "the 1934 Amendment Specifically Repeals Earlier Inconsistent Statutes" (*respondents' brief*, p. 75). This proposition begs the very question. If the purpose of the act was to reinvest federal courts with authority to enjoin strikes over minor grievances, repeal by any language, general or specific, was unnecessary. If that was not the purpose of the act, then the Norris-LaGuardia Act is unaffected.

However, the general provision repealing earlier inconsistent statutes (Railway Labor Act, Sec. 8, 48 Stat. 1197, 45 U. S. C. 161) is not without relevance. It shows that even when Congress was considering the matter of repeal in the light of discussion as to whether injunctions should become available, it forbore any explicit repeal or emasculation of the Norris-LaGuardia Act.

In the light of these considerations, Congressional intention should not be gleaned or divined from this court's ex-

pressions, none of which involve a suit by a carrier to enjoin a strike, or by ambiguous legislative history.¹

This court's attention is respectfully called to the now-pending *Manion v. Kansas City Terminal Railway Company* case, No. 702, in which the Court of Appeals of the State of Missouri, the highest tribunal in that state in which a decision could be had, has sustained the jurisdiction of a state court to enjoin a strike called because employees subject to the Railway Labor Act who work overtime contend that under an applicable contract overtime work constitutes the starting of a second shift, wherefore they are entitled to an extra day's pay, the carrier contending that the contract entitles them to overtime pay only for hours actually worked. In that case neither the carrier nor the union has submitted any grievance to the adjustment board. The opinion of the Court of Appeals of Missouri is reported in 290 S. W. (2d) at page 63, and is printed in the petitioners' appendix here.

While the writ of *certiorari* has not been granted and we do not propose to argue the *Manion* case in this Reply Brief, that case does emphasize the fact that strikes, although called over past grievances, are not, as respondents seek to persuade the court, necessarily disputes over "minor" or "particular" grievances but set patterns of precedent in industry that, although involving the construction of the

¹ The distinction between the kind of problem of statutory construction presented in this case and that presented in most cases is made clear by the following examples:

There is no doubt that the Federal Employers Liability Act is intended to protect railroad workers engaged in interstate commerce. Many questions have arisen as to whether a particular employee is engaged in interstate commerce. If the case is fairly debatable, it is probable that none of the members of Congress voting for or against the bill had the particular problem in mind. Construction consists merely in applying an evident policy to a case that was not clearly contemplated.

In this case, however, the question of whether the right to strike should be prohibited was the essence of the debate.

existing rather than the fashioning of new contracts, may well be more important than so-called "major" grievances.

II.

EVEN IF THE RAILWAY LABOR ACT DOES PROHIBIT STRIKES, IT DOES NOT FOLLOW THAT FEDERAL COURTS ARE INVESTED WITH JURISDICTION TO ENJOIN SUCH STRIKES.

Respondents make no effective demonstration that even if Congress intended to prohibit strikes over past grievances, it intended a surreptitious repeal of the Norris-LaGuardia Act.

The failure of the spokesmen for the act to include a provision for such repeal when the matter was specifically called to their attention affords virtual assurance that in their judgment the inclusion of such provision would have defeated the act.

Well nigh conclusive demonstration that the Railway Labor Act of 1934 did not enact a prohibition of strikes, whether over "major" or "minor" grievances and whether arising from past claims or demands for the future, inheres in the fact that in 1950, the Donnell bill (Senate S. 1950, number 3463), which would by Section 10a have interdicted strikes of the kind involved here, *failed to pass*.

Surely this bill was unnecessary if such strikes were already forbidden.

Congress has long pondered the matter of the right to strike *versus* economical and industrial stability not only in the field of railroading but in all other fields.

It can hardly be supposed that Congress would undertake to abridge this right without saying so. It is not, as

the respondents argue, a question of comparing and reconciling the two statutes. Congress has plainly forborne repeal of the Norris-LaGuardia Act.

But if the two statutes are to be reconciled the reconciliation is not a difficult task.

Even if the Railway Labor Act prohibits strikes, it does not follow that Congress intended those strikes to be enjoined.

Congress may well have intended such prohibition to be implemented in proceedings in which the defendant unions and members would have such rights as trial by jury in civil and criminal proceedings and that they should not be exposed to an injunction granted by a single judge.

Conclusion.

For reasons urged in petitioners' original brief and in the briefs of *amici curiae* referred to above and this Reply Brief, we respectfully submit that judgment of the Court of Appeals for the Seventh District be reversed and the original judgment of the District Court which denied injunction should be reinstated.

Respectfully submitted,

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Respondents.

**On Petition For a Writ of Certiorari to The United States
Court of Appeals for The Seventh Circuit**

BRIEF FOR THE RESPONDENTS IN OPPOSITION

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COMPANY, ET AL.,
Respondents.

On Petition For a Writ of Certiorari to The United States
Court of Appeals for The Seventh Circuit



BRIEF FOR THE RESPONDENTS IN OPPOSITION

Opinion Below

The district court's findings of fact, conclusions of law, and decree will be found at pages 61 to 67 of the petition for certiorari. The judgment of affirmance by the court below will be found at pages 67 to 68 of the petition and was based on its prior ruling reported in 229 F. 2d 926 (Pet. 37-45).

Jurisdiction

The judgment of the court of appeals sought to be reviewed was entered on May 17, 1956 (Pet. 67-68). The petition for a writ of certiorari was filed on August 13, 1956. The jurisdiction of this Court is invoked under Section 1254(1) of the Judicial Code.

Questions Presented

1. Did Congress make the National Railroad Adjustment Board's jurisdiction mandatory for both sides in grievance cases?
2. May a federal court enforce mandatory provisions of the Railway Labor Act?

Statute Involved

The pertinent provisions of the Railway Labor Act (45 U. S. C. § 151, *et seq.*) are set out in Appendix A, *infra*.

Statement

This case arises from the refusal of the Brotherhood of Railroad Trainmen to permit grievances submitted to the National Railroad Adjustment Board to be decided by that Board.

This case involves grievances, which are known as the "minor disputes" of the railway labor field. This case has nothing to do with the ability to strike in order to enforce collective bargaining demands, which are the "major disputes". These grievances are the every-day petty problems which arise in the operation of any contract. They usually affect one or a few employees. That is the reason the framers of the 1934 Railway Labor Act and the judges interpreting it have held the Adjustment Board route to be compulsory. The time claims of a few men should not be the cause for putting hundreds or thousands of railroad employees out of work.

The feeling of the framers and the courts was epitomized by Commissioner Eastman, the Federal Coordinator of Transportation who was the principal draftsman of the 1934 amendments which established the Adjustment Board:

"Well, it is my own opinion that there ought not to be strikes with reference to minor grievances of that sort. I should be very unwilling to take away from the employees the right to strike on major issues, but these are not major issues." (Hearings, House Committee on Interstate and Foreign Commerce (73d Cong., 2d Sess.), on H. R. 7650, p. 61.)

Because these minor disputes are bound to occur, and because they are readily susceptible of adjudication on an individual basis, the Adjustment Board was instituted to handle them upon presentation by the employee, his union, or the railroad concerned.

The case involves 21 individual claims of employees of one of respondents, The Chicago River and Indiana Railroad Company, (hereafter referred to as the River Road), relating to the interpretation or application of existing contracts.

The claims are 19 claims for extra pay, 1 claim for re-employment, and 1 claim for reinstatement in a yard foreman's job. The union and the employees exhausted negotiations on the property. (R. 9-10.¹) The proper step thereafter is for the interested employee, usually through his union, to submit to the Adjustment Board (or a system board) such of his grievances as he wishes to process further. In fact, a contract to which the River Road and the Trainmen are parties provides that the decision of the highest officer on the carrier designated to handle the claims shall be binding and final unless "proceedings . . . are instituted" within one year thereafter (R. 10.) Instead of instituting such proceedings in the Adjustment Board, the Trainmen accumulated these grievances and called a strike (R. 10).

1. The record references throughout this brief are to the record in No. 11744 in the court below.

Because of the serious nature of this threatened strike, the National Mediation Board, on its own volition, proffered its services, docketed the dispute as Case A-4524, and sent representatives to mediate the dispute (R. 10). The River Road agreed to accept the proposals of the Mediation Board, but the union remained adamant (R. 13, 23). The Mediation Board then informed the parties by telegram that its efforts had failed (R. 10). Instead of following Section 5 First of the Railway Labor Act (45 U.S.C. § 155 First), which requires that the parties wait 30 days after mediation has failed before striking, the union promptly called the strike for 4 days later (R. 11). In a last effort to insure the following of orderly procedures, the River Road filed the grievances with the Adjustment Board, but a strike was called despite this (R. 10-11).

Thereupon respondents brought this action to compel the union to follow the orderly procedures of the Railway Labor Act, that is, to permit the processing of the 21 grievances through the Adjustment Board where they are pending. The complaint and amended complaint were both verified. (R. 5, 7-13.) Appropriate relief was decreed by the district court (Pet. 66-67) after the court of appeals rendered its opinion (Pet. 37-45). The decree in favor of respondents was thereafter affirmed (Pet. 67-68).

The Procedures of the Railway Labor Act

This case involves the Railway Labor Act of 1926, as amended. The "as amended" refers to extensive revisions made in the Act in 1934.

In 1926 the railroads and the unions submitted to Congress an agreed draft of the Railway Labor Act. Congress passed that Act as drafted. The 1926 Act provided for the handling of major disputes over future agreements by a procedure of mediation, arbitration, and investigation by an emergency board which would report its findings to the

President of the United States. That Act intended that questions of contract changes, wage increases, and like matters would go through this process before either side would resort to self-help—before the railroads would lock out or the brotherhoods would strike. The 1926 Act did not have any mandatory features for the settlement of grievances or of disputes arising from the interpretation or application of existing agreements.

In 1934, the Federal Coordinator of Transportation, Commissioner Joseph B. Eastman of the Interstate Commerce Commission, at the behest of the unions, presented to Congress amendments to the 1926 Act. Congress adopted these amendments. The first important amendment added a specific statement of the purposes of the Act to the statute (Section 2 of the Act, 45 U.S.C. § 151a). Other amendments clarified or strengthened the procedure for creating bargaining agreements by collective bargaining. Probably the most important amendment was to change Section 3, which concerned grievances, from a permissive section. The new Section 3 First created the National Railroad Adjustment Board to handle grievances and the interpretation or application of agreements (45 U.S.C. § 153 First).

The 1934 Act contemplates two broad classifications of disputes. One group of disputes, the major disputes, are "disputes concerning rates of pay, rules, or working conditions"—that is, the arriving at collective bargaining contracts for the future. The other group of disputes, the minor disputes, are "disputes growing out of grievances or out of the interpretation or application of agreements covering rates of pay, rules, or working conditions." ("General Purposes," Section 2 of the Railway Labor Act, 45 U.S.C. § 151a).

The first group of disputes relates to negotiating new contracts. If the parties are unable to agree by themselves on a new contract, the Act provides an opportunity to invoke mediation. The National Mediation Board may even intervene on its own initiative if it thinks there is a need. If mediation should fail, the Mediation Board shall attempt to persuade the parties to submit their problems to arbitration. The Act makes such arbitration binding, if the parties elect to agree to it. If the parties do not agree, then the next step is for the Mediation Board to decide whether to inform the President of the United States that an emergency exists. The President may then appoint an emergency board to investigate and report back to him the merits of the dispute. The hope is that the pressure of public opinion will cause the parties to settle their differences along the lines of that board's report.

The other group of disputes concerns grievances and questions growing out of the operation of existing contracts. If these are to be progressed beyond the local officers of the railroad and the union, Section 3 First provides for their being filed with the National Railroad Adjustment Board.

The Adjustment Board is divided into 4 divisions, depending on the nature of the cases. Disputes involving yard-service employees go to the First Division of the Board. The First Division is composed of 10 members. Five of these members are called Labor Members, and five are called Carrier Members. The Labor Members are officers of the various unions, and among them is a vice president of the Trainmen.

This Board hears claims. If the members split evenly on a claim and cannot agree on a neutral referee, the National Mediation Board will appoint a referee to break the tie. Petitioner Brotherhood's interests are well protected on this Board since, as noted, one of its vice presidents is

a member of the First Division where these claims are pending.

Nor is the record of the Board such as to dismay the petitioner Brotherhood. One study found that approximately two-thirds of the decisions had been in favor of labor, and that the percentage would have been higher except that the unions deliberately arranged to present a certain number of "sure losers" so as to adjust the ratio. Northrup and Kahn, *Railroad Grievance Machinery: A Critical Analysis* (1952) 5 *Industrial & Labor Relations Rev.* 365, 381.

The parties may also agree to submit their grievances to special adjustment boards set up locally or specially, subject to the right of either side to discontinue this practice and revert back to the jurisdiction of the national Board (Section 3 Second, 45 U. S. C. § 153 Second).

Theoretically, these two lines of major and minor disputes will not cross. However, in recent years the petitioner union and one or two other unions have adopted the practice of accumulating grievances and threatening a strike over them. That is what was done in this case. If the strike is likely to be of national harm, the Mediation Board will try to settle it even though the matter is not within its jurisdiction. As that Board has explained in its annual reports, these disputes are to be routed to the Adjustment Board:

"However, the National Mediation Board has found it necessary in some instances during recent years to proffer its mediatory services under section 5, First (b) of the act when the failure of the parties to settle dockets of time claims and grievances, or to refer them to the proper tribunal, the Adjustment Board, created emergency situations which threatened to result in strikes." (18th Annual Report of the National Mediation Board (1952) p. 5.)

These same comments have been made in recent years by the Mediation Board in other reports.

Formerly the Mediation Board has even recommended that some of these matters be referred to an emergency board. In 1954 the Mediation Board announced that it was refusing to recommend that the President appoint emergency boards to consider claims like those in this case. 20th Annual Report of the National Mediation Board (1954), p. 22. Thus although the Mediation Board intervened in this case, it did not recommend an emergency board.

ARGUMENT

There are two basic reasons why certiorari should be denied in this case:

- (1) The court of appeals was clearly correct in its decision.
 - (2) There is not any actual conflict among the circuits on this matter.
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1. The holding below that the federal courts may enforce the Congressional commands in the Railway Labor Act was necessary. The Railway Labor Act, or that part applicable here, does not have any agency other than the courts for its enforcement. To hold that the federal courts cannot act is to hold that the Railway Labor Act is unenforceable.

The court of appeals arrived at its holding by following a long line of decisions by this Court that the federal courts must enforce the Railway Labor Act and are not prevented from doing so by the Norris-LaGuardia Act. *Brotherhood of Railroad Trainmen v. Howard*, 343 U.S. 768, 774; *Graham v. Brotherhood of L. F. & E.*, 338 U. S. 232, 239-240; *Steele v. Louisville & N. R. Co.*, 323 U. S. 192, 207; *Tunstall v. Brotherhood of L. F. & E.*, 323 U. S. 210; *Virginian R. Co. v. System Fed. No. 40*, 300 U. S. 515, 562-563; cf. *Texas & N.O.R. Co. v. Brotherhood of Clerks*, 281 U. S. 548.

Petitioners have attempted to distinguish these cases, or at least the more recent ones, by stating that they were necessary to right discriminations by unions against Negroes (Pet. 28-30). But there is nothing in the Norris-

LaGuardia Act which makes an exception for a Negro. To reverse the present case would be to repudiate the foregoing cases.²

The Brotherhood also argues that resort to the Adjustment Board is not mandatory for the Brotherhood. It argues that this procedure was provided as a convenience which the Brotherhood officers may use if they feel moved to do so, or may reject if they prefer to throw all members out of work over the grievances of a few individuals (Pet. 17, 23).

It is important to note that the Brotherhood does not argue that the railroads may also ignore the Board. As this Court well knows, it has long been recognized that the railroads must subject themselves to the Adjustment Board procedure. The effect of the Brotherhood's argument is to read into the Railway Labor Act language that the Adjustment Board is mandatory for the railroads, but not for the Brotherhood (cf. Pet. 58-59).

The injunction here does not impinge on the policies of the Norris-LaGuardia Act. This injunction does not take sides—does not help one group rather than the other. This injunction is not like one against a strike over future contract terms. An injunction there may delay the individual employee's bettering his work conditions or his pay. But a strike here is not for future rights. It is over some grievance growing out of past contracts. Employees are not benefited by a strike over grievances; rather, they are benefited when a minor individual grievance can be settled without throwing everybody else out of work. It should be noted that the Adjustment Board regularly awards back

2. Presumably petitioner Brotherhood, which has been involved in racial disputes, would like to see such a repudiation. Cf. *Brotherhood of Railroad Trainmen v. Howard*, 343 U. S. 768; *Rolfes v. Dwellingham*, 198 F. 2d 591 (C.A. 8, 1952); *Brotherhood of R. Trainmen v. Templeton*, 181 F. 2d 521 (C.A. 8, 1950), certiorari denied, 340 U.S. 832; *Hunter v. Atchison, T. & S. F. R. Co.*, 171 F. 2d 594 (C.A. 7, 1948), certiorari denied 337 U.S. 916.

pay for well-founded grievances, so that delay is disadvantageous to the railroad and does not penalize the employees. An injunction here protects all parties and the public by requiring that these grievances be settled by the administrative body which Congress considers capable of handling the matter (see Pet. 60).

Although behind the Norris-La Guardia Act is the laudable purpose of protecting the legitimate interests and activities of organized labor, behind the Railway Labor Act is the equally basic and fundamental purpose of protecting the public against the widespread chaos and hardships that result from application of the "law of the jungle" in labor relations on key transportation systems.

A. *The Railway Labor Act requires that grievances be submitted to the Adjustment Board (or system boards) when processed beyond the carrier.*

Grievances arise out of the application of existing contracts to individual situations. Grievances are usually settled by interpreting and applying existing contractual language. As can be seen, this type of dispute can be handled by a procedure comparable to adjudication. As can also be seen, these are disputes which will be cropping up constantly under the administration of any kind of contract. The employees cannot afford to strike every time a few of their fellows feel aggrieved.

By 1934, the unions found the enforcement of such grievances by strike to be too burdensome. They asked Congress to replace the prior chaos with orderly procedure. Congress complied by creating the mandatory Adjustment Board procedure, a procedure the unions had sought since their World War I experience with adjustment boards during federal management of the railroads. This procedure was recently discussed in a submission of the Order of Railroad Telegraphers to the Third Division of the Ad-

justment Board in Docket TE-6699 (p. 85): "But the sole point in enacting the [1934] legislation was to provide a means whereby these disputes 'growing out of grievances or out of the interpretation or application of agreements * * *', could be settled without resort to the only other means within the command of labor * * *", viz., strikes.

After 20 years of acceptance on the part of the courts, the unions, and the railroads that the Adjustment Board procedure is mandatory for all parties, this union now insists that it can disregard the Board according to its own whim. It should be noted that this union's argument is limited to a procedure discretionary only for the union. The procedure is still mandatory for everybody else. The petition will be perused in vain for any suggestion that the railroads have any discretion to ignore the Adjustment Board.

Actually, this Court has made quite clear that the privilege claimed by petitioners is not theirs. As this Court noted in *Order of R. Conductors v. Southern R. Co.*, 339 U.S. 255, 256-7:

- | "And if a carrier or a union could choose a court instead of the Board, the other party would be deprived of the privilege conferred by § 3 First (i) of the Railway Labor Act, 48 Stat. 1191, 45 U.S.C. § 153 First (i), which provides that after negotiations have failed 'either party' may refer the dispute to the appropriate division of the Adjustment Board."

It is true that that case held that the carrier could not take the matter to court. We do not believe that this Court meant to say that one cannot frustrate the Adjustment Board by going into a court, but one may frustrate it by lock-out or strike, especially where, as here, the claims are pending before the Adjustment Board.

On another occasion this Court discussed some of the aspects of the Adjustment Board procedure. Thus in

Elgin, J. & E. R. Co. v. Burley, 325 U.S. 711, 727, the Court stated that Congress in 1934 changed from voluntary arbitration of grievance disputes to compulsory arbitration of them:

"The procedure is in terms and purpose very different from the preexisting system of local boards. That system was in fact and effect nothing more than one for what respondents call 'voluntary arbitration' . . . The Adjustment Board was created to remove the settlement of grievances from this stagnating process and bring them within a general and inclusive plan of decision. The aim was not to dispense with agreement. It was to add decision where agreement fails and thus to safeguard the public as well as private interests against the harmful effects of the preexisting scheme."³

The *Burley* case reached the following conclusion (at p. 727):

"The procedure adopted is not one of mediation and conciliation only, like that provided for major disputes under the auspices of the Mediation Board. Another tribunal of very different character is established with 'jurisdiction' to determine grievances and make awards concerning them. Each party to the dispute may submit it for decision, whether or not the other is willing, provided he has himself discharged the initial duty of negotiation."

Emphasis should be given to that sentence, "Each party to the dispute may submit it for decision, *whether or not the other is willing* . . ." This is the heart of the 1934 grievance amendment. In the present case, the River Road has submitted the grievances to the Adjustment Board.

This Court was only repeating what Congress itself had been told by the draftsmen and advocates of the 1934

3. See also *Slocum v. Delaware, L. & W. R. Co.*, 339 U. S. 239, 242. *Walters v. Chicago and North Western Railway Co.*, 216 F. 2d 332, 335 (C.A. 7, 1954); *Rolfes v. Dwellingham*, 198 F. 2d 591 (C.A. 8, 1952).

amendments. This Court in the *Burley* case cited, as its source for its conclusion that the Adjustment Board procedure was compulsory, the key labor witness before the Congressional committees. This man, who spoke for the national standard railway labor organizations, was the then and now grand president of the Brotherhood of Railway and Steamship Clerks, Mr. George M. Harrison. At that time he appeared for the "standard" unions, including the Trainmen. This Court quoted the following testimony of President Harrison (the emphasis in this quotation is this Court's):

*"These railway labor organizations have always opposed compulsory determination of their controversies. We have lived a long time and got a lot of experience, and we know that these minor cases that develop out of contracts that we make freely, and * * * we are now ready to concede that we can risk having our grievances go to a board and get them determined, and that is a contribution that these organizations are willing to make."* (325 U.S. at p. 728, n. 24.)

Mr. Harrison then said (Hearings, Senate Committee on Interstate Commerce (73d Cong., 2d Sess.) on S. 3266, p. 35):

"I just want to tie this tail on to that kite—if I may express it that way—that if we are going to get a hodgepodge arrangement by law, rather than what is suggested by this bill, then we don't want to give up that right, because we only give up the right because we feel that we will get a measure of justice by this machinery that we suggest here." (Emphasis supplied.)

What "right" is being given up, if not the "right to strike?" Mr. Harrison of course knew that in return the 1934 Railway Labor Act makes awards of the Adjustment Board judicially enforceable against carriers (Section 3 First (p)).

Contrary to the slighting remarks made at page 20 of the petition, George Harrison is a man whose remarks must be

given great weight. Those members of this Court who have served in Congress undoubtedly recall the many times through the years that legislation has been proposed under Mr. Harrison's auspices. He was, of course, for years the chairman of the Railway Labor Executives Association. More recently he has also become vice president of the AFL-CIO.

If there were any question about the intent of Congress in 1934, a study of the legislative history would set it to rest.

The draftsman of these amendments, Commissioner Eastman, told both the Senate Committee and the House Committee when discussing the establishment of the Adjustment Board:

"The willingness of the employees to agree to such a provision is, in my judgment, a very important concession and one of which full advantage should be taken in the public interest. I regard it as, perhaps, the most important part of the bill." (Hearings before the Senate Committee on Commerce (73d Cong., 2d Sess.) on S. 3266, p. 17; Hearings before the House Committee on Interstate and Foreign Commerce (73d Cong., 2d Sess.) on H. R. 7650, p. 47.)

In the House Committee, Mr. Eastman discussed the Adjustment Board procedure as follows (at pp. 59-61):

"Now, the proviso on page 10 protects the individual who wants to walk out but it does not cover collective action in walking out.⁴

"Mr. Pettengill. Your interpretation there, Mr. Commissioner, would be that under the language at the bottom of page 17, although the individual may be free to walk out, the organization would not be free to

⁴ This refers to Section 2 Tenth (45 U. S. C. 152 Tenth), which conforms the Railway Labor Act to the Thirteenth Amendment of the Constitution by confirming the right of any individual to refuse to work, no matter what limitations other Sections of the Act place upon the power of his union to call a strike. The decree herein respects this provision (Pet. 67).

call a strike after an award had been made on these matters that are covered by the language at the bottom of page 17.

"Commissioner Eastman. Well, that is my understanding; yes sir.

"Mr. Lea. Under that proviso, in the tenth subdivision, do you take it that that draws a distinction between an individual quitting his employment and the employees agreeing collectively to quit?

"Commissioner Eastman. Yes sir. . . .

"Commissioner Eastman. Well, as I say, you have exactly similar provisions in the present labor act with respect to decisions by adjustment boards and where they agree to arbitration, and this law is in effect an agreement on the part of the parties to arbitrate all of these minor disputes.

"The Chairman. Was that not one of the reasons, to try to keep down strikes to get people together?

"Commissioner Eastman. Yes. It is a very important part of it. The willingness of the employees to agree to a provision of that sort seemed to me to be a very important and praiseworthy thing.

"Commissioner Eastman. Well, it is my own opinion that there ought not to be strikes with reference to minor grievances of that sort. I should be very unwilling to take away from the employees the right to strike on major issues, but these are not major issues."

When asked whether the Act prohibited strikes over grievances, Mr. Eastman asked his legal advisor, Mr. Carmalt to answer this. Mr. Carmalt was one of those who drafted the amendments. He testified as follows (House Hearings, page 63):

"Mr. Carmalt. My opinion is that there should not be the right to strike over grievances of this kind where the Government has provided the machinery whereby the grievances may be considered by an impartial board.

"Mr. Wolverton. Do you think that the language that has been referred to by Mr. Eastman, as conferring this absolution, so to speak, so far as an employee is concerned [see note 4, *supra*], would provide equal protection to the organization itself?

"Mr. Carmalt. No; I think this injunction would run rather as against a strike. There is no other means of resisting the order. But, as to an individual quitting, I think the absolution would be effective.

"Mr. Wolverton. Do you think that the absolution that has been given the employee should likewise be given to the organization?

"Mr. Carmalt. Oh, no.

"Mr. Wolverton. What?

"Mr. Carmalt. No.

"Mr. Wolverton. What did you say?

"Mr. Carmalt. No. The employees, in their drafting of the bill, put that absolution in, and in redrafting the bill we took the language of the present act which would not give that absolution to the organization.

"Mr. Wolverton. So then you assume that under the provisions of this bill an injunction could issue to prevent an organization from going on strike?

"Mr. Carmalt. Such an injunctive process as might be necessary to prevent the strike growing out of the settlement of grievances under section 3, I should believe would lie."

The salient testimony given by George Harrison for this Brotherhood and the others to the Senate Committee has already been quoted from the *Burley* case, 325 U.S. 711, 728, note 24. This appears in the Senate Hearings, p. 35;

see also pp. 31, 33, 34, 167. Mr. Harrison told the House Committee substantially the same thing. House Hearings, pp. 81-82, 83, 89. He offered the same explanation to the membership of the unions in an article in 1934, "Railway Labor Act", 41 American Federationist 1053, 1057.

Thomas P. O'Brien, representing the International Brotherhood of Teamsters, also recognized that Section 3 First substituted compulsory adjustment for strikes over grievances (House Hearings, p. 118). Martin W. Clement, who was the spokesman for the railroads, agreed with the interpretation of Messrs. Eastman, Harrison and O'Brien (Senate Hearings, pp. 67, 69; R. 26-27).

The drafting committees accepted the word of these witnesses. Each committee reported to its respective House that the bill provided compulsory boards of adjustment. Senate Report No. 1065, 73d Cong. 2d Sess. (1934) pp. 1-2; House Report No. 1944, 73d Cong., 2d Sess. (1934) pp. 1-3, 4.

In addition, the members of each House expressed on the floor of their House what they thought the bill did. Thus the manager of the bill in the Senate, Senator Dill, said (78 Cong. Rec. 12083):

"The bill has in it provisions which the railroad employees of the country and their organizations are backing. They have agreed to submit to compulsory arbitration of their [grievance] disputes. That is a new thing in the labor world. That is something which has not been secured in any prior labor legislation that has been proposed."

Similarly, Representatives expressed the view that this bill would provide for peace in the area of grievances (78 Cong. Rec. 11714, 11716). Among these were Representatives Joseph Martin (78 Cong. Rec. 11718) and Sam Rayburn (78 Cong. Rec. 11720).

Finally, although Congress at that time, June 1934, was prepared to adjourn, it was asked to stay long enough to amend the 1926 Act to make strikes over grievances unnecessary. This request was presented in a June 14, 1934, letter from the Secretary of Labor, Miss Perkins, and the Federal Coordinator of Transportation, Commissioner Eastman, to President Roosevelt and read to the Senate:

"The Coordinator has drafted amendments to the Railway Labor Act designed to . . . provide for compulsory adjustment of individual grievances. . . .

"If the proposed amendments are not enacted [as to features not relevant here] . . . a host of strike threats and other labor difficulties will arise this summer, demanding Presidential intervention. Similar difficulties are also likely to result because of the unavailability of adequate grievance-adjustment machinery as proposed by the amendments." (78 Cong. Rec. 12375.)

Congress passed that bill, which became the 1934 amendments to the Railway Labor Act, 48 Stat. 1185. This statement of Commissioner Eastman that the 1934 Act provides for "compulsory adjustment of individual grievances" represented his final views on this subject (cf. Pet. 19).

A decision that the adjustment procedure is not mandatory and exclusive would make nonsense of the 1934 amendments to the Act. Such a holding would say that Congress did nothing significant in enacting the 1934 Adjustment Board amendments. A process to which either side may put a halt at will is not useful and would be completely contrary to the construction adopted in the cases that the Railway Labor Act permits either party to disputes to take grievances to the Adjustment Board even though the other party is not willing. The petitioners' view is that the railroads, the unions, and the courts have all been in error for the past years in considering that grievances processed beyond the railroad property have to be taken to the

Adjustment Board (or to system boards). The statute, its judicial construction and its legislative history compel the conclusion that grievances must be settled by the Adjustment Board rather than by strike.

B. *Federal courts may enforce mandatory provisions of the Railway Labor Act.*

The Railway Labor Act, as involved here, does not establish enforcement agencies as does the Labor-Management Relations Act in the industrial labor field. The various bodies set up under the Railway Labor Act, such as the Mediation Board or the Adjustment Board, are not the sort of administrative agency which is able to police its area of authority. The function of making decisions or enforcing orders was deliberately withheld from the Mediation Board so that all sides would regard it as neutral (Hearings on S. 3266, Senate Committee on Interstate Commerce, 73d Cong., 2d Sess. (1934), pp. 134-135). The Adjustment Board is empowered only to adjudicate such claims as are submitted to it by one or both parties. The emergency boards are created in each instance for only 30 days, and can only investigate. Arbitration boards only exist if the parties by agreement create them.

As a result, if the courts cannot enforce mandatory provisions of the Railway Labor Act, such as are involved here, the provisions are unenforceable. Prior to the 1926 Railway Labor Act, it was held that the Act of 1920 was not enforceable in court. Accordingly, that Act ceased to be followed by both sides and the 1926 Act had to be drafted. *Pennsylvania R. System Federation No. 90 v. Pennsylvania R. Co.*, 267 U.S. 203.

This Court's first case under the 1934 amendments to the Railway Labor Act, *Virginian R. Co. v. System Fed. No. 40*, 300 U.S. 515, considered this same problem. The Act commanded collective bargaining. The argument was made, as it is in this case, that Congress intended to ex-

clude enforcement of that duty from the jurisdiction of the courts. The argument was rejected. Instead, this Court held that the Act would be unenforceable unless the courts did have the power to enforce it. This was in line with the holding under the 1926 Act in *Texas & N. O. R. Co. v. Brotherhood of Clerks*, 281 U.S. 548. There, Chief Justice Hughes, speaking for a unanimous Court, said (at p. 569):

"As the prohibition was appropriate to the aim of Congress, and is capable of enforcement, the conclusion must be that enforcement was contemplated.

"The absence of penalty is not controlling. The creation of a legal right by language suitable to that end does not require for its effectiveness the imposition of statutory penalties. Many rights are enforced for which no statutory penalties are provided. In the case of the statute in question, there is an absence of penalty, in the sense of specially prescribed punishment, with respect to the arbitral awards and the prohibition of change in conditions pending the investigation and report of an emergency board, but in each instance a legal obligation is created and the statutory requirements are susceptible of enforcement by proceedings appropriate to each. The same is true of the prohibition of interference or coercion in connection with the choice of representatives. The right is created and the remedy exists."

Petitioners do not really challenge this proposition. They meet it, rather, by arguing that the Norris-LaGuardia Act prevents this judicial enforcement. They say (Pet. 16, note 5; see also Pet. 23-27) even if it is true that the mandate of Congress will be only a pious wish unless courts can enforce this mandate, still the courts cannot enforce it and the public must look to other remedies, which we know do not exist.

But this Court has many times rejected this same argument. It was raised in the already cited *Virginian R. Co. v. System Fed. No. 40*, 300 U.S. 515, also under the 1934 amendments. Mr. Justice Stone concluded for this Court,

at pages 562-563, that the provisions of the Railway Labor Act "render nugatory the earlier and more general provisions of the Norris-LaGuardia Act." In the earlier *Texas & N.O.R. Co. v. Brotherhood of Clerks*, 281 U.S. 548, it was argued that Section 20 of the Clayton Act prevented an injunction. The Clayton Act was held inapplicable for other reasons, but Chief Justice Hughes' opinion also noted (at p. 571):

"It may be doubted whether Section 20 can be regarded as limiting the authority of the court to restrain the violation of an explicit provision of an act of Congress, where an injunction would otherwise be the proper remedy."

Cases subsequent to these cases have followed their reasoning. In fact, speaking, *inter alia*, of the Adjustment Board provisions, the Court stated in the *Burley* case (325 U.S. 711, 721-722, note 12):

"Thus, one of the statute's primary commands, *judicially enforceable*, is found in the repeated declaration of a duty upon all parties to a dispute to negotiate for its settlement. See note 26 [referring to Section 3 First (i) and other Sections of the Railway Labor Act]. * * *." [Italics supplied.]

Another recent such pronouncement is from *Brotherhood of Railroad Trainmen v. Howard*, 343 U.S. 768, 774 (1952):

"Our conclusion is that the District Court has jurisdiction and power to issue necessary injunctive orders [to enforce the Railway Labor Act] notwithstanding the provisions of the Norris-LaGuardia Act."

In that case the Trainmen, the same union as is petitioner in this case, had by strike threats forced an employer to discriminate against other employees (see 343 U.S. at p. 771). The district court was ordered to remedy this situation and was told it was free to award appropriate relief (343 U.S. at p. 775), which could of course include enjoining the resumption of the strike threats.

In another case, *Graham v. Brotherhood of L.F. & E.*, 338 U.S. 232, 239-240, this Court held that injunctive relief was appropriate:

"Nor does the Norris-LaGuardia Act contain anything to suggest that it would deprive these Negro firemen of recourse to equitable relief from illegal discriminatory representation by which there would be taken from them their seniority and ultimately their jobs. Conversely there is nothing to suggest that, in enacting the subsequent Railway Labor Act provisions insuring petitioners' right to nondiscriminatory representation by their bargaining agent, Congress intended to hold out to them an illusory right for which it was denying them a remedy. If, in spite of the *Virginian*, *Steele*, and *Tunstall* cases, *supra*, there remains any illusion that under the Norris-LaGuardia Act the federal courts are powerless to enforce these rights, we dispel it now. The District Court has jurisdiction to enforce by injunction petitioners' rights to non-discriminatory representation by their statutory representative."⁵

These decisions reason that it would be senseless for Congress to require certain action by the 1934 amendments to the Railway Labor Act, if Congress meant the earlier provisions of the Norris-LaGuardia Act to prevent the federal courts from enforcing mandatory provisions of the later Act.

Petitioners have tried to distinguish these cases by saying that they involve special circumstances which do not apply here. What petitioners cannot avoid is that in each of these cases this Court felt that the Norris-LaGuardia Act would have prevented judicial action, absent the need to enforce the Railway Labor Act.

5. See also *Steele v. Louisville & N. R. Co.*, 323 U. S. 192, 207; *Tunstall v. Brotherhood of L. F. & E.*, 323 U. S. 210; *Roifes v. Dwellingham*, 198 F. 2d 591, 594 (C.A. 8, 1952).

It is true that the *Clerks* case in 1932 and the *Virginian* case in 1937 affirmed injunctions against railroads. But some of the subsequent relevant cases here have involved injunctions against unions which committed misdeeds by use of strikes or threats to strike (see pp. 22-23, *supra*). The only way those cases could be avoided would be for the Court to repudiate them, which it should not do. The court below properly chose acceptance rather than repudiation (Pet. 42).

2. This Court has been told that the present case is in conflict with the decision of the Fifth Circuit in *Brotherhood of R. Trainmen v. Central of Georgia R. Co.*, 229 F. 2d 901 (Pet. 33-16). The cases do not involve the same questions and, therefore, do not contradict each other. This very Brotherhood has so contended in another case pending here (Pet. 15). Its contentions appear in Appendix B, *infra*.

The present case turns on whether strikes over grievances are permitted. The *Central of Georgia* case does not involve grievances. It involves a strike to obtain a new contract. This is a major dispute, which is governed by entirely different procedures (see Pet. 39-41). Despite petitioners' assertions (Pet. 15), the Seventh Circuit was fully cognizant that the major and minor disputes are treated differently under the Act (Pet. 41) and its holding was carefully confined to the minor disputes (Pet. 42, 45, 68).

It is true that in the *Central of Georgia* case this Brotherhood had convinced the Supreme Court of Georgia that the dispute was one appropriate for the Adjustment Board (85 S.E. 2d 413). One might well feel that the Brotherhood should be hoist by its own petard. But such a feeling cannot change the actual facts of the case. That case involves a demand for a new contract. It involves nothing less or more. It is not an Adjustment Board case. Indeed, the Adjustment Board has not progressed it. It is true that the Fifth Circuit's opinion does not reflect this difference. But the bases for a decision often do not actually appear

in the opinion. Presumably such a vital difference was taken into account, but in any event the difference in the two cases prevents a conflict.

CONCLUSION

There has been a growing tendency to strike over grievances, which is the very menace that the Adjustment Board was designed to eliminate. Unless the judgment below remains undisturbed, strikes over grievances will continue to multiply and the Adjustment Board will become a hollow shell. Respondents are not asserting that the Railway Labor Act bans strikes over the "major disputes" after the processes of the Railway Labor Act have been exhausted. However, it is their firm conviction that the principal purpose of amending the Railway Labor Act in 1934 was to ban strikes over grievances, the "minor disputes," by providing compulsory arbitration of grievances by the Adjustment Board. This mandatory duty to process grievances before the Adjustment Board must be enforced by the courts. The decisions under the Norris-LaGuardia Act make it plain that the courts are free to enforce mandatory provisions of the Railway Labor Act.

Because the decision below is correct and there is no actual conflict of decisions, the petition for a writ of certiorari should be denied.

Respectfully submitted.

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APPENDIX A

Section 2 of the Railway Labor Act (45 U.S.C. 151a) provides in part:

"GENERAL PURPOSES

"(1) To avoid any interruption to commerce or to the operation of any carrier engaged therein; • • • (4) to provide for the prompt and orderly settlement of all disputes concerning rates of pay, rules, or working conditions; (5) to provide for the prompt and orderly settlement of all disputes growing out of grievances or out of the interpretation or application of agreements covering rates of pay, rules, or working conditions."

Section 2 First of the Railway Labor Act (45 U.S.C. 152 First) provides:

"GENERAL DUTIES

"It shall be the duty of all carriers, their officers, agents, and employees to exert every reasonable effort to make and maintain agreements concerning rates of pay, rules, and working conditions, and to settle all disputes, whether arising out of the application of such agreements or otherwise, in order to avoid any interruption to commerce or to the operation of any carrier growing out of any dispute between the carrier and the employees thereof."

Section 3 First (i) of the Railway Labor Act (45 U.S.C. 153 First (i)) provides:

"The disputes between an employee or group of employees and a carrier or carriers growing out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions, including cases pending and unadjusted on the date of approval of this Act, shall be handled in the usual manner up to and including the chief operating officer of the carrier designated to handle such dis-

putes; but, failing to reach an adjustment in this manner, the disputes may be referred by petition of the parties or by either party to the appropriate division of the Adjustment Board with a full statement of the facts and all supporting data bearing upon the disputes."

Section 3 Second of the Railway Labor Act (45 U.S.C. 153 Second) provides:

"Nothing in this section shall be construed to prevent any individual carrier, system, or group of carriers and any class or classes of its or their employees, all acting through their representatives, selected in accordance with the provisions of this Act, from mutually agreeing to the establishment of system, group, or regional boards of adjustment for the purpose of adjusting and deciding disputes of the character specified in this section. In the event that either party to such a system, group, or regional board of adjustment is dissatisfied with such arrangement, it may upon ninety days' notice to the other party elect to come under the jurisdiction of the Adjustment Board."

APPENDIX B

Petitioner Brotherhood of Railroad Trainmen has asserted in Case No. 84, present Term, that there is no conflict of decisions between the Seventh Circuit's decision herein and the Fifth Circuit's decision in the *Central of Georgia* case. In its brief in opposition in No. 84, this same Brotherhood has stated (Br. 13-14):

**4. There is no Conflict Between the Fifth and
Seventh Circuits Warranting Certiorari
in This Case**

It is true that the Seventh Circuit in the case of *Chicago River and Indiana Railroad et. al v. Brotherhood of Railroad Trainmen* did not feel restrained in its issuance of an injunctive order, by the Norris-LaGuardia Act, while the Fifth Circuit in the instant case felt otherwise. Nevertheless the two courts were dealing with different problems. In the *Chicago River and Indiana* case only grievances were involved; whereas in the instant case a Section 6 notice for a new rule was the cause of the carrier's seeking an injunction. The *Chicago River and Indiana* case involved twenty-one "grievances." *Elgin v. Burley*, 325 U.S. 711, 89 L. ed. 1886, 65 S.Ct. 1282, classifies disputes of this character as "minor." It differentiates them from disputes involving the making of collective agreements and characterizes these disputes as "major" disputes. It is clear that the Railway Labor Act authorizes submission of such minor disputes to the Railroad Adjustment Board; and it vests the National Mediation Board with jurisdiction of "major disputes."

It is thus clear that the decision of the Seventh Circuit actually turned upon the handling of grievances whereas the Fifth Circuit case was one dealing with the rule making function of collective bargaining representatives. *Elgin v. Burley* undertakes to demonstrate the intention of Congress to provide separate

treatment for the two different types of disputes. The Seventh Circuit said:

"Insofar as the Railway Labor Act, as we now interpret it, authorizes the issuance of injunctions to prevent strikes over *minor disputes*, it operates to repeal the provisions of the Norris-LaGuardia Act, to the extent that the wording thereof might otherwise be said to apply to such railway labor disputes. It follows that, in the case at bar, the district court has jurisdiction to entertain plaintiff's prayer for injunctive relief." (Emphasis supplied.)

While we are convinced that the Seventh Circuit decision is erroneous, we submit that it does not present such a conflict with the instant case as to warrant granting the writ of certiorari in the instant case. What Congress intended with reference to minor disputes is quite a different thing from its intention with respect to major disputes.⁶

6. "What constitutes a 'conflict'? . . . The concept is not an exact one. One point may be stressed: the Court is interested in conflicts which impair uniformity of decision where uniformity is significant, conflicts which its decision in the particular case will remove. This rules out, of course, hosts of particularistic applications of general rules turning upon the analysis of special states of fact." ("The Business of the Supreme Court at October Term, 1933," Frankfurter and Hart, 48 Harv. L. Review, Rev. 238, 268.)

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IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1956

No. 313

BROTHERHOOD OF RAILROAD TRAINMEN, et al.,
Petitioners,

vs.

CHICAGO RIVER & INDIANA RAILROAD COMPANY,
et al., *Respondents.*

**On Writ of Certiorari To The
United States Court of Appeals
For The Seventh Circuit**

BRIEF FOR THE RESPONDENTS

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IN THE
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OCTOBER TERM, 1956

NO. 313

BROTHERHOOD OF RAILROAD TRAINMEN, *et al.*,
Petitioners,

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CHICAGO RIVER & INDIANA RAILROAD COMPANY,
et al.,
Respondents.

On Writ of Certiorari To The
United States Court of Appeals
For The Seventh Circuit

BRIEF FOR THE RESPONDENTS

Opinion Below

The district court's findings of fact, conclusions of law, and decree appear at R. 44-50. The judgment of affirmance by the court below appears at R. 55-56 and was based on its prior ruling reported in 229 F. 2d 926 (R.30-39).

Jurisdiction

The judgment of the court of appeals sought to be reviewed was entered on May 17, 1956 (R. 55-56). The petition for writ of certiorari was filed on August 13, 1956, and was granted on October 15, 1956 (R. 57). The jurisdiction

of this Court is invoked under Section 1254(1) of the Judicial Code.

Questions Presented

1. Is the Railway Labor Act a "one-way" statute making Adjustment Board jurisdiction mandatory for railroads but optional for unions?
2. May a federal court enforce mandatory provisions of the Railway Labor Act?

Statute Involved

The pertinent provisions of the Railway Labor Act (45 U.S.C. § 151, *et seq.*) are set out in the Appendix, *infra*.

Statement

The facts of this case are not in dispute. Petitioner Brotherhood of Railroad Trainmen (herein sometimes referred to as Trainmen) will not let the National Railroad Adjustment Board (herein referred to as Adjustment Board) decide certain grievances submitted to it. Instead of following the statutory adjustment procedure, the Trainmen have called a strike. (R. 6-8, 21, 46, 48.)

The case arose over demands by the Trainmen concerning 21 grievances of members of that union against the employing carrier, The Chicago River and Indiana Railroad Company (herein referred to as River Road): The union and the employer exhausted negotiations on the property. (R. 5-6, 46.) The statutory procedure thereafter is for the interested employee, usually through his union, to submit to the Adjustment Board (or a system board) such of his grievances as he wishes to process further (R. 21, 47-48). Evidently the Trainmen originally intended to follow that procedure, for a contract to which the employer and the Trainmen are parties provides that the decision of the highest officer on the carrier designated to handle the claims

shall be binding and final unless "proceedings . . . are instituted" within one year thereafter (R. 6). But instead of instituting proceedings in the Adjustment Board or elsewhere, the Trainmen accumulated these grievances and called a strike (R. 7, 46).

Because of the serious nature of this threatened strike, the National Mediation Board, on its own volition and despite its questionable jurisdiction, proffered its services, docketed the dispute as Case A-4524, and attempted to mediate the dispute (R. 7, 46). The River Road accepted the proposals of the National Mediation Board, but the Trainmen remained adamant. Thereupon the National Mediation Board suggested arbitration, and the River Road accepted the suggestion. After the Trainmen refused arbitration, the National Mediation Board informed the parties by telegram that its efforts had failed. Immediately thereafter, in a last effort to insure the following of orderly procedures prescribed by the Railway Labor Act, the River Road filed the grievances with the Adjustment Board. Instead of permitting the Adjustment Board to decide the grievances, and indeed instead of even waiting 30 days after the failure of mediation, as required by Section 5 First of the Railway Labor Act (45 U.S.C. § 155 First), the Trainmen promptly called a strike for four days later. (R. 7, 9, 24, 46.)

Respondents then brought this action to compel the Trainmen to follow the orderly procedures of the Railway Labor Act, that is, to permit the processing of the 21 grievances through the Adjustment Board where they are pending as 20 cases, two having been consolidated. Respondents alleged that maintenance of the status quo would not hurt the employees, but would benefit them, since it is to their interest to avoid cessation of work and loss of pay during adjustment proceedings (R. 21).

The respondent River Road is the railroad which operates the switching and yard facilities at the Chicago Stockyards.

The other respondents are the railroads which use those facilities for moving their cars into and out of the stockyards. (R. 4, 44.)

As shown by the verified complaint, this strike would halt the operations of all trains into and out of these stockyards. It would force the River Road to lay off 1,100 employees who would lose in excess of \$12,000 a day in wages. It would cost the River Road thousands of dollars a day. It would require an embargo of all shipments into and out of the stockyards, causing irreparable damage to the 28 respondent railroads and the 600 industries served. (R. 7, 8, 46-47.)

Attached to the motion for preliminary injunction were two affidavits (R. 22-24). One of them was the affidavit of Martin W. Clement, who was chairman of the railroad committee appointed to deal with the 1934 amendments to the Railway Labor Act and who testified at the Congressional Hearings thereon. His affidavit states (R. 22) his understanding that the Railway Labor Act makes it mandatory to resort to the Adjustment Board for grievances processed beyond the carrier, and forbids strikes over grievances.

The district court did not construe the Railway Labor Act but merely held that under the Norris-La Guardia Act the court lacked jurisdiction to grant injunctive relief (R. 26).

The district court's decision was reversed by the court of appeals (R. 40). Thereafter the district court entered a permanent injunction in respondents' favor, observing the proviso of Section 2 Tenth of the Railway Labor Act (45 U. S. C. 152 Tenth) against requiring an individual to render labor without his consent, and permitting an individual to quit his job (R. 49-50). The petition for certiorari sought a review of the judgment affirming this final injunction (R. 55-56).

SUMMARY OF ARGUMENT

I.

The Railway Labor Act of 1934 makes handling of grievances by way of the Adjustment Board mandatory for both employees and employer. Section 3 First (i) of the Act provides specifically for the reference of grievances to the National Railroad Adjustment Board "by either party." The relevant statutory language is incomprehensible with any other interpretation.

If there is any doubt about the meaning of the statute, its legislative history shows that Congress intended to make the Adjustment Board procedure mandatory for the determination of grievances, the "minor disputes" in the railway labor world. Thus the manager of the bill in the Senate explained to his colleagues that the railroad labor organizations had agreed under the bill "to compulsory arbitration of their [grievance] disputes." Similarly, Commissioner Eastman, the chief draftsman of the bill, advised the President that it was "designed to . . . provide for compulsory adjustment of individual grievances" in order to prevent strikes.

George M. Harrison, the spokesman for the labor organizations, also advised the Congressional Committees that the 1934 Adjustment Board provisions provided for "compulsory arbitration" of grievances. Mr. Harrison made it plain that if grievances were processed beyond the property of the carrier they must be submitted to the Adjustment Board, and that labor was giving up the right to strike over grievances in return for the Adjustment Board provisions of the bill.

This Court has always assumed that such was the meaning of the Act. It has frequently recognized that the Adjustment Board was established for the compulsory deter-

mination of grievances. See *Elgin, J. & E. R. Co. v. Burley*, 325 U. S. 711, 727; *Order of R. Conductors v. Southern R. Co.*, 339 U. S. 255, 256-257; *Slocum v. Delaware, L. & W. R. Co.*, 339 U. S. 239, 242; *Transcontinental Air v. Koppal*, 345 U. S. 653, 660.

II.

The commands of the 1934 Railway Labor Act cannot be enforced without the assistance of the federal courts. That is why this Court has held from the first that the federal courts must furnish the needed enforcement. *Virginian R. Co. v. System Federation No. 40*, 300 U. S. 515, 545, 552; cf. *Texas & N. O. R. Co. v. Brotherhood of Clerks*, 281 U. S. 548.

Ever since the *Virginian* case, it has been clear that the provisions of the Railway Labor Act "render nugatory the earlier and more general provisions of the Norris-La Guardia Act" (300 U. S. at pp. 562-563). It is immaterial that the enforcement decree might enjoin a strike. *Brotherhood of Railroad Trainmen v. Howard*, 343 U. S. 768.

Finally, Section 8 of the 1934 Railway Labor Act specifically repeals all inconsistent Acts. The 1932 Norris-La Guardia Act must be read in the light of the 1934 Railway Labor Act (*United States v. Hutcheson*, 312 U. S. 219, 235), and the specific terms of the later statute must prevail over the general terms of the 1932 statute (*Clifford F. MacEvoy Co. v. United States*, 322 U. S. 102, 107).

ARGUMENT

Introduction: Handling of Railway Labor Disputes.

This case is not an attempt to impress compulsory arbitration of labor contracts upon the railroad industry. Whatever may be the arguments or facts about a "right to strike," this case has no relation to any theory that railroad employees may not band together to enforce their demands as to the terms of their employment.

This case concerns the realization, first by people in the field for labor and management, and later by Congress, that the cause of collective bargaining will be furthered by separating the different problem of enforcing individual rights under existing contracts from the major collective bargaining function of "legislating" terms of employment. One cannot fully comprehend the subject matter of this case without understanding this fundamental discovery and how it has influenced the history of legislation in this field and the machinery of the present Railway Labor Act.

1. Major and Minor Railway Labor Disputes.

Although one viewing the subject of labor-management disputes is often appalled at the variety of matters which can become the source of friction, close analysis will reveal that there are in general two categories of disputes. One is the sort that results in newspaper headlines. Most recently, such headlines revealed that the railroads and many of the unions signed contracts which are to last for several years and which make elaborate provisions for adjusting rates of pay in the light of the cost of living and other factors. The negotiation of contracts may result in a national strike, as happened recently in Canada over the railroads' attempt to eliminate firemen on the diesel-powered trains.

These disputes over negotiating terms of employment are often referred to as "major disputes." This category partakes of the nature of legislation in the labor field and concerns rules or contracts for the future. The Railway Labor Act refers to this category of disputes as "disputes concerning rates of pay, rules, or working conditions" (Section 2(4), 45 U.S.C. § 151a).

The other type of dispute occurs in the course of the every-day application of any working agreement. These are the day-to-day questions which arise when the general terms of any rule or contract are taken from their austere context and attempted to be fitted to people. For example, a collective bargaining contract may call for penalty pay for certain types of work, and a question will arise whether a certain employee performed penalty-pay work. This is simply application and interpretation of the contract, and an employee's complaint of misapplication is a grievance. Such disputes will occur under any form of contract or legislation which acts on people. A standard general rule is that an intoxicated employee will be disciplined. A grievance may occur over whether a certain employee was intoxicated on duty. This is, again, a matter of adjusting the individual case to the already agreed upon general rule.

These latter disputes are described by the Act as "disputes growing out of grievances or out of the interpretation or application of agreements covering rates of pay, rules, or working conditions" (Section 2(5), 45 U.S.C. § 151a). Sometimes they are called "minor disputes." Perhaps a more descriptive term would be "individual cases" as opposed to the category of collective-bargaining issues which have been described above as major disputes. Just as the act of collective bargaining is comparable to legislation, so the settlement of these individual disputes is closely akin to adjudication. Cf. Kheel, "Umpires of 10,000 Labor Disputes," N. Y. Times Magazine 19 (Jan.

20, 1957); Davey, Labor Arbitration: A Current Appraisal (1955) 9 Industrial & Labor Rel. Rev. 85.

In *Central of Georgia Railway Co. v. Brotherhood of Railroad Trainmen*, No. 84, present Term, the Trainmen's brief insists throughout that a major dispute was involved because they were demanding a new contract rule. If the Trainmen are correct in their statement that the *Central of Georgia* case does not involve grievances, the minor disputes, then the decision of the Fifth Circuit in that case is clearly distinguishable from the decision below.

2. Legislative Treatment of Railway Labor Disputes.

Since 1888, there has been some form of Railway Labor Act in the United States statutes. From the first, the major emphasis has been on the area of collective bargaining, as would be expected.

The first pertinent statute (25 Stat. 501) provided for voluntary arbitration and also for investigation and publication in connection with any major dispute. Later legislation (Erdman Act of 1898, 30 Stat. 424; Newlands Act of 1913, 38 Stat. 103) stressed mediation and conciliation until after the government operation of the railroads in World War I. The subsequent Title III of the Transportation Act of 1920 (41 Stat. 456, 469), which contained an elaborate system of arbitration of new agreements, broke down when it was declared to be unenforceable. *Pennsylvania R. Co. v. United States Railroad Labor Board*, 261 U. S. 72; *Pennsylvania R. System Federation No. 90 v. Pennsylvania R. Co.*, 267 U. S. 203.

In 1926, the railroads and the unions drafted an agreed bill which they presented to Congress. This is the Railway Labor Act which is still on the books (44 Stat. 577, 45 U.S.C. § 151 et seq.). Its method of regulating collective bargain-

ing was to return to the original ideas of 1888. The method was to promote collective bargaining by every means, including federal mediators to assist in mediation and conciliation. If the parties cannot agree to arbitrate any unsettled issues and mediation fails, the President of the United States may appoint some citizens to investigate the dispute and report the facts to him. It is hoped that the publicity in connection with this will affect the parties' intentions. The 1934 amendments to the Act did not substantially affect this method of handling collective bargaining.

The handling of individual cases (grievances and contract interpretation and application) has followed a different path as would be expected from the nature of such disputes. Kheel, "Umpires of 10,000 Labor Disputes," N. Y. Times Magazine 19 (Jan. 20, 1957). Prior to 1917, the union would aggregate dissatisfied individuals' claims and call a strike. This required convincing non-grieved employees that they should strike because the next time it might be their grievance. The system, obviously, was only strong so long as other employees were willing to sacrifice their families and hopes for the individual claims of fellow employees.

The first major attempt to improve this method arose out of the 1917 special commission award adopting the 8-hour day. The 8-hour agreement eventually gave rise to 30,000 disputes of individual application. The railroads and certain brotherhoods agreed on a "Commission of Eight" (4 labor members and 4 management members) to handle all such disputes arising over the application of the eight-hour award. This Commission was continued during the World War I government operation of the railroads (by General Order No. 13) as Adjustment Board No. 1, and its functions were expanded to handle all grievances of operating employees. Two other adjustment boards, for nonoperating

employees, were established by General Orders 29 and 53. Wolf, The Railroad Labor Board (1927) 11, 50-52. These were bodies of an even number of members chosen half by the unions and half by the federal management of the railroads.

On return of the railroads to their private owners in 1920, this system of adjustment boards was abandoned. The next several years saw much of the effort of the unions devoted to the re-establishment of these adjustment boards. Section 3 of the 1926 Act facilitated the voluntary creation of such boards, and, indeed, by 1934 a certain number of them were operating.

The 1934 amendments to the Act saw the complete victory of the union effort to settle individual cases through adjustment boards. The unions went to Congress with their complaint that the railroads were refusing to cooperate in establishing voluntary boards. At their behest a wholly new Section 3 was submitted to Congress by the Federal Coordinator of Transportation, Commissioner Joseph B. Eastman of the Interstate Commerce Commission. They asked Congress to replace the prior chaotic method of settling individual cases with orderly procedure. This Congress did for them.

3. Procedures Under the Present Railway Labor Act.

The 1934 Railway Labor Act provides for an Adjustment Board, a Mediation Board, and an Emergency Board. These boards have different functions which should not be confused.

As noted above, there are two types of disputes. The major disputes relate to negotiating new contracts. When such negotiations break down and these bargaining disputes endanger the country, the National Mediation Board steps in. If it fails to persuade the parties to agree, the President

of the United States may appoint an Emergency Board which reports to him what it finds are the facts of the dispute. Neither of these Boards makes any decision which binds the parties.

The Mediation Board does not adjudicate. It assigns one or more mediators to the dispute. The mediator first sits in a room with the agents of one side and listens to their story. He then sits in a room with the other side and listens to their story. Thereafter he shuttles back and forth between rooms as an important message-bearer and interpreter, telling each what the other side is offering and what their reasons are. The hope is that this mediation will succeed in working out some basis of agreement which could not be found by the parties directly.

The Mediation Board was specifically designed by Congress so that it would not decide anything. Since its job is one requiring the confidence of each side, Congress designed the Mediation Board's duties so that the Board would not have to make a decision and thereby run the risk of alienating one side or the other.

The Presidential Emergency Boards are supposed to be investigatory. They report the facts to the President. The hope is that the influence of public opinion will cause the parties to reach an agreement based on this spotlighting of the facts.

When the nature of the Mediation and Emergency Boards is understood, one can understand the reason why the minor disputes are treated differently. These minor disputes involve accrued rights. They are the sort of problem which cannot be avoided in any continuing employment relation, but which, because the relation is continuing, often are magnified into too important an issue.

The handling of these individual disputes, concerning grievances and questions growing out of the operation of existing contracts, is the subject matter of this case. The parties, of course, disagree over whether the statutory handling is mandatory. But both agree that the usual handling contemplated or hoped for by the statute is that now described.

Like all other labor matters, an effort is to be made to settle these within the local railroad organization. If these are to be progressed beyond the local officers of the railroad and the union, Section 3 First (45 U.S.C. § 153 First) provides for their being filed with the National Railroad Adjustment Board.

The Adjustment Board is divided into 4 divisions, depending on the nature of the cases. Disputes like these involving yard-service employees go to the First Division of the Board. The First Division is composed of 10 members. Five of these members are called Labor Members, and five are called Carrier Members. The Labor Members are officers of the various unions, and among them is a vice president of the petitioner Trainmen.

This Board hears claims. If the members split evenly on a claim and cannot agree on a neutral referee, a referee is appointed to break the tie.

The parties may also agree to submit their grievances to special adjustment boards set up locally or specially, subject to the right of either side to discontinue this practice and revert back to the jurisdiction of the national Board (Section 3 Second, 45 U.S.C. § 153 Second).

In recent years the petitioner union and one or two other unions have adopted the practice of accumulating grievances and threatening a strike over them, as was done in

this case. If the strike is likely to cause national harm, the Mediation Board will try to settle it even though the matter may not be within its jurisdiction, as was done in this case. The Mediation Board has explained in its annual reports:

"However, the National Mediation Board has found it necessary in some instances during recent years to proffer its mediatory services under section 5, First (b) of the act when the failure of the parties to settle dockets of time claims and grievances, or to refer them to the proper tribunal, the Adjustment Board, created emergency situations which threatened to result in strikes." (18th Annual Report of the National Mediation Board (1952) p. 5.)

These same comments have been made in recent years by the Mediation Board in other reports. In its latest report the Mediation Board has said:

"As in previous reports, the Board again finds it necessary to call attention to the failure to utilize the provisions of Section 3 of the act to resolve disputes involving the application or interpretation of agreement rules and grievances arising thereunder. In November 1955 the Board inaugurated a program of assigning an "E" number series to cases where the Board's mediation services were proffered under the emergency clause of Section 5 of the Railway Labor Act. In many instances, these emergency situations involved strike dockets containing time claims and grievances which should have been referred to the National Railroad Adjustment Board for adjudication" (22d Annual Report of the National Mediation Board (1956) p. 19).

4. Delay in the Adjustment Board.

It is alleged that the Adjustment Board docket is so crowded that considerable delay will result if submission is held to be mandatory.

It is true that the First Division docket, but not the docket of the other three Divisions, is congested. The Act provides specific measures to break such congestion. A Division may delegate two of its members to hear cases (Section 3 First (k)) or a Division may establish regional boards to hear cases (Section 3 First (w)).

In 1949 the First Division did establish two regional boards to hear cases in order to clean up its docket. In 1952, the labor organizations, for reasons best known to themselves, revoked their authorization of such procedure. Since then, the First Division's docket has remained congested, but the use of either Section 3 First (k) or Section 3 First (w) could afford relief.

Thus although *amicus* Brotherhood complains of a backlog of cases on the First Division (Br. 27, 41), the unions themselves have been responsible for this backlog.

The 21 grievances in the present case have been abnormally delayed for another reason than a congested docket. Usually the union submits a statement of facts and argument soon after a grievance is filed. Here the union has not yet filed a submission and is still contesting the Adjustment Board's right to consider these grievances.

I.

SUBMISSION OF GRIEVANCES TO THE ADJUSTMENT BOARD IS MANDATORY FOR THE UNIONS AS WELL AS FOR THE RAILROADS.

Part I of petitioners' brief attempts to show that the Railway Labor Act does not require grievances to be processed by the Adjustment Board. However, even Part I of petitioners' brief is based throughout on the Norris-La Guardia Act rather than on the Railway Labor Act. Apparently petitioners have faint hope that their Railway Labor Act arguments can be accepted and therefore have had to resort to the Norris-La Guardia Act (discussed in Part II herein).

It is interesting that neither the petitioners nor the *amici curiae* on their side suggest that the railroads may elect, at their convenience, to abide by the Adjustment Board procedure or to ignore that Board and go their own way. These unions claim this choice of remedy only for themselves.

There is nothing in the history, background, or words of the Railway Labor Act to suggest that Congress was discriminating against the railroads in this regard. A really appropriate description of the Act is that, because of the public interest in industrial peace on the railroads, "It is a double-track system; the trains run both ways simultaneously * * *" (Judge Brown's dissent in *Brotherhood of Railroad Trainmen v. Central of Georgia Ry. Co.*, 229 F. 2d 901, 910 (C.A. 5, 1956)).

The wording of this statute itself makes clear that submission of grievances and similar disputes to the Adjustment Board is to be an exclusive procedure in this field. Otherwise, the provision in Section 3 First (i) for reference to the Board "by either party" is utter nonsense.

The legislative history of this statute reveals that Congress was told that it was providing a mandatory procedure for grievance settlement, and that Congress voted in the light of such knowledge.

Finally, this Court through the years has held that aggrieved parties must go to the Adjustment Board. It is unreasonable to assume that this Court meant to foreclose the courts to these parties and at the same time to encourage industrial strife.

It cannot be emphasized too strongly that the court of appeals did not hold that a strike over major disputes is enjoined. Indeed, respondents concede that the Railway Labor Act permits strikes over major disputes when the procedures of the Railway Labor Act have been exhausted. However, it is their conviction that the Railway Labor Act does not permit strikes over grievances. The nature of grievances as individual problems growing out of agreed-upon contracts makes them particularly adjustable by a form of arbitration. Kheel, "Umpire of 10,000 Labor Disputes," N. Y. Times Magazine 19 (Jan. 20, 1957). This is the reason Congress and the unions selected the Adjustment Board procedure for them.

A. The Statute Itself Prescribes Compulsory Settlement of Grievances.

When this Court was called upon to consider the nature of the Adjustment Board procedure, the majority opinion concluded that such procedure was mandatory. *Elgin, J. & E. R. Co. v. Burley*, 325 U. S. 711. The dissent was on other grounds and did not indicate any disagreement with the majority's interpretation of Section 3 First (i). The extensive discussion of the mandatory nature of the Adjustment Board procedure was by a Justice fully cognizant

of the rights of labor. It is cited here to indicate that members of this Court, all of whom were familiar with the atmosphere surrounding the 1934 amendments, believed at the time of the *Burley* decision that the 1934 Act had continued the long tradition of promoting collective bargaining in an atmosphere of mediation and conciliation as far as the normal bargaining disputes were concerned, but that, as to the individual cases of contract application known as grievances, the Act had created a procedure which was wholly at odds with one of mediation and conciliation only. As Justice Rutledge said specifically (325 U. S. at p. 727):

"The procedure adopted is not one of mediation and conciliation only, like that provided for major disputes under the auspices of the Mediation Board. Another tribunal of very different character is established with 'jurisdiction' to determine grievances and make awards concerning them. Each party to the dispute may submit it for decision, *whether or not the other is willing*, provided he has himself discharged the initial duty of negotiation." (Emphasis supplied.)

Why did this Court at that time consider this Adjustment Board procedure to be mandatory? A detailed study of the statute reveals quite clearly that this conclusion was inescapable then and continues to be inescapable today.

The first pertinent 1934 amendment was to add a statement of five general purposes at the beginning of the substantive sections of the Act. These begin with Section 2 of the Act (45 U.S.C. § 151a) and read in part:

"General purposes

"(1) To avoid any interruption to commerce or to the operation of any carrier engaged therein; * * * (5) to provide for the prompt and orderly settlement of all disputes growing out of grievances or out of the

interpretation or application of agreements covering rates of pay, rules, or working conditions."

The next pertinent amendment was a whole new Section 3 (45 U.S.C. § 153). The prior Section 3 of the 1926 Act had provided:

"Section 3. First, Boards of adjustment shall be created by agreement between any carriers or groups of carriers as a whole, and its or their employees.

"Second, Nothing in this Act shall be construed to prohibit an individual carrier and its employees from agreeing upon the settlement of disputes through such machinery of contract and adjustment as they may mutually establish."

This was understood to be a completely voluntary arrangement. Prior to 1934 there were some boards recognized by the standard national operating unions, including the Trainmen. The procedure of these boards was mandatory at the behest of either party, even though the statute did not then require this (The Attorney General's Committee on Administrative Procedure, *Railway Labor: The National Railroad Adjustment Board and the National Mediation Board* (Monograph No. 17, 1941) Appendix 39-61), and the 1934 enactment carried this mandatory feature into the new Adjustment Board. There were also some system adjustment boards for non-operating employees on a few railroads, often where the bargaining representative was other than one of the national standard unions. Cf. *Atlantic Coast Line R. Co. v. Pope*, 119 F. 2d 39 (C.A. 4, 1941).

The new Section 3 began, "First. There is hereby established a Board" and commenced to establish the present Adjustment Board. The majority of the words are devoted to the mechanics of this Board. Then Section 3 First (i) reads (45 U.S.C. § 153 First (i)):

"The disputes between an employee or group of employees and a carrier or carriers growing out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions, including cases pending and unadjusted on the date of approval of this Act, shall be handled in the usual manner up to and including the chief operating officer of the carrier designated to handle such disputes; but, failing to reach an adjustment in this manner, *the disputes may be referred* by petition of the parties or *by either party to the appropriate division of the Adjustment Board* with a full statement of the facts and all supporting data bearing upon the disputes." (Emphasis supplied)

Section 3 Second allows the carriers and any class of employees, acting through their representatives, to set up a system, group, or regional board. This permission, however, is limited as follows (45 U.S.C. § 153 Second):

"In the event that either party to such a system, group, or regional board of adjustment is dissatisfied with such arrangement, it may upon ninety days' notice to the other party elect to come under the jurisdiction of the Adjustment Board."

Thus the statute provides that grievances should first be negotiated on the employing railroad. If such is not satisfactory, then either party may progress the matter further if it desires. It can follow two lines of procedure. If there is a system or other agreed board, it may go to it. But if there is not, as there is not in most situations, or if the local board is unsatisfactory, it must go to the Adjustment Board. This accords with the stated purposes of the statute to avoid interruption of rail service and to provide for the prompt and orderly settlement of grievances and accords with the statutory duty (set forth in Section 2 First) to exert every reasonable effort to settle disputes.

The Adjustment Board provisions of the Railway Labor Act specify that "either party" to disputes over grievances can submit them to the Adjustment Board (Section 3 First (i)). One party thus has the statutory right to go to the Adjustment Board without the consent of the other party. Here the River Road has submitted the grievance disputes to the Adjustment Board. Since 1934 the carriers have docketed hundreds and the organizations thousands of cases with the First Division, which is the Division involved here.

The railroads nowhere contend that the Railway Labor Act prohibits the petitioners from striking over all matters. However, the railroads do contend that disputes over grievances within Section 3 First (i) of the Railway Labor Act must be resolved by the Adjustment Board (or a system board) rather than by a strike. The words of the statute unmistakably require this conclusion.

In fact, even in this Court the *amicus* Railway Labor Executives Association (herein sometimes referred to as RLEA) concedes that Congress made the Adjustment Board "available to either party wishing to submit the [grievance] dispute for decision" (RLEA Br. 5) and "empowered either party, at his or its election, to submit such disputes as were not settled on the property to the National Railroad Adjustment Board" (RLEA Br. 9). Similarly, in the court below petitioners stated (Br. 37):

"There was little doubt that it was intended [by Congress] that a party could submit grievances to the National Railroad Adjustment Board whether or not the other party is willing."

That admission accords exactly with respondents' argument of this proposition. Here the River Road did submit the disputes to the Adjustment Board, so that even under

the interpretation of petitioners and the *amicus* RLEA, the Adjustment Board must be permitted to decide the disputes unless the Norris-La Guardia Act interferes.

Only the *amici* Brotherhood and RLEA seek solace in the phrase "may be referred" in Section 3 First (i). Naturally Congress was not forcing parties to institute proceedings in the Adjustment Board if they agree on a system board under Section 3 Second (45 U.S.C. 153 Second) or if they do not care to process the grievances beyond the designated "chief operating officer of the carrier" (Section 3 First (i)). Thus George M. Harrison testified for the Trainmen and others (House Hearings,¹ pp. 81-82):

"So, out of all of that experience and recognizing the character of the services given to the people of this country by our industry and how essential it is to the welfare of the country, these organizations have come to the conclusion that in respect to these minor-grievance cases that grow out of the interpretation and/or application of the contracts already made that they can very well permit those disputes to be decided, *if they desire to progress them*, to be decided, by an adjustment board." (Emphasis supplied.)

The underscored phrase shows that the unions understood that they might not desire to prosecute some claims. However, all claims they wished to prosecute beyond "the chief operating officer of the carrier designated to handle such disputes" (Section 3 First (i)) had to go to the Adjustment Board, which was the avenue substituted for strikes over grievances, unless a system board should be agreed upon under Section 3 Second.

Mr. Harrison proposed the present form of Section 3 Second with its provision for agreed-upon system boards of

1. Hearings before the House Committee on Interstate and Foreign Commerce (73rd Cong., 2d sess.) on H. R. 7650.

adjustment and for election by either party to return to the jurisdiction of the Adjustment Board if dissatisfied with a system board. Commissioner Eastman's version had not contained this. Mr. Harrison explained (Senate Hearings,² p. 38):

"That amendment [Section 3 Second] is designed to permit freedom of the parties to set up either kind of this machinery which we designate [system, group or regional boards of adjustment], if they do not want to go to the national board [the Adjustment Board] with their grievances." (Emphasis supplied.)

The following Harrison explanation (House Hearings at p. 83) of alternatives to the Adjustment Board also shows why the word "may" had to be used in Section 3 First (i) if grievances were prosecuted beyond the carrier:

"So that controversy has not been disposed of by the House bill, because any division of the national board will have authority, if this bill is passed, to set up a regional board. Then, it not being the purpose of the bill to supply machinery, if the parties can get together themselves, the bill contains a provision that on any railroad or on any group of railroads the management and the employees might voluntarily agree on any other kind of a board for the settlement of their grievances, and if they do voluntarily agree on any other kind of a board, they shall be excluded from the jurisdiction of the national board or the regional board that is established under the power of a diffusion of the national board; but in order to safeguard against the possibility of the parties making a mistake in the establishment of their voluntary machinery and it not working out properly, as they may anticipate, the bill provides that should any party become dissatisfied with such voluntary machinery as they may establish,

2. Hearings before the Senate Committee on Interstate Commerce (73rd Cong., 2d sess.) on S. 3266.

that then on 90 days' notice they shall become subject to the national board and may take their disputes to the national board."

As already noted, in the *Burley* case (325 U. S. 711, 727) this Court has rejected the construction of the phrase "may be referred" in Section 3 First (i) advanced here by two amici. Likewise in *Walters v. Chicago and North Western Railway Co.*, 216 F. 2d 332, 335 (C. A. 7, 1954) the Court stated:

"Our attention is called to the fact that Section 3 First (i) of the Railway Labor Act, 45 U.S.C.A. § 153 First (i), provides that after the parties have failed to reach an agreement between themselves 'the disputes may be referred by petition of the parties or by either party to the appropriate division of the Adjustment Board' (our emphasis), and that if the intent had been to make submission to the Board compulsory the word 'shall' would have been used. We think this contention is met in another case decided by the Supreme Court the same day the *Slocum* case was decided. In this second case, *Order of Railway Conductors of America v. Southern Railway Co.*, 339 U. S. 255, 256-257, 70 S. Ct. 585, 586, 94 L. Ed. 811, the Court said: 'And if a carrier or a union could choose a court instead of the Board, the other party would be deprived of the privilege conferred by § 3 First (i) of the Railway Labor Act, 48 Stat. 1191, 45 U.S.C. § 153 First (i), 45 U.S.C.A. § 153 First (i), which provides that after negotiations have failed 'either party' may refer the dispute to the appropriate division of the Adjustment Board.'"

In *Rolfes v. Dwellingham*, 198 F. 2d 591 (C.A. 8, 1952), the court of appeals affirmed a decree which enjoined the Trainmen from "in any manner" interfering with the Missouri Pacific's employment of plaintiff waiters-in-charge while their grievances were being considered by the Adjustment Board. The injunction was aimed in part at the

resumption of the Trainmen's previous strike over the same grievances, so that the Eighth Circuit also considered the adjustment of grievances to be mandatory. Here too the Trainmen should be enjoined from striking while these 21 grievances are being considered by the Adjustment Board.

B. The Intent of Congress Was to Make the Adjustment Board Procedure Mandatory.

If it is felt that the words of the statute are equivocal, then it is proper to resort to the legislative history of this statute to see if it throws any light on the choice of the words used.

In June 1934, when the members of both Houses of Congress made up their minds whether to vote for or against these amendments, they were told unequivocally that they were voting on compulsory arbitration of grievances. The words used were not subject to misunderstanding by them. The bills which were reported (each House reported a virtually identical bill except for one measure not relevant here) provided such mandatory settlement, and Congress was so informed.

The manager of the bill in the Senate, Senator Dill, the chairman of the Senate Committee on Interstate Commerce, told his colleagues that they were being asked to vote for the following measure:

"The bill has in it provisions which the railroad employees of the country and their organizations are backing. They have agreed to *compulsory arbitration of their [grievance] disputes*. That is a new thing in the labor world. That is something which has not been secured in any prior labor legislation that has been proposed." (Emphasis supplied.) (78 Cong. Rec. 12083.)

Congress then enacted that measure.

Petitioners' brief (page 13) states a fictitious question which the Congressmen are suggested to have possibly posed to themselves. The above quotation shows the actual question which they did consider.

Commissioner Eastman was the chief draftsman of the 1934 bill (see the *Burley* case, 325 U. S. 711, 723, note 16). Petitioners and their supporting *amici curiae* try to leave the impression that Commissioner Eastman's last expression on the bill was to indicate that he had doubts about its providing mandatory grievance settlement procedure. However, Commissioner Eastman's final explanation of his draft to Congress will be found at 78 Cong. Rec. 12375 (1934). This was a letter written June 14, 1934, by the Federal Coordinator of Transportation, Commissioner Eastman, and by the Secretary of Labor, Miss Perkins, to President Roosevelt, urging him to press for speedy enactment of the amendments:

"The Coordinator has drafted amendments to the Railway Labor Act designed to * * * provide for compulsory adjustment of individual grievances. * * *

"If the proposed amendments are not enacted [as to features not relevant here] * * * a host of strike threats and other labor difficulties will arise this summer, demanding Presidential intervention. Similar difficulties are also likely to result because of the unavailability of adequate grievance-adjustment machinery as proposed by the amendments."

Finally, this statutory procedure was backed by the very petitioners and their *amici curiae* in this very case. They helped Commissioner Eastman draft the statute; they testified for it; and they urged their representatives to vote for it. For these reasons, it is interesting to see what they

thought they were urging their Congressmen to support. The bill was described in "Railway Labor Act," XLI American Federationist 1053, 1057 (1934):

"The power to enforce decisions of the National Board of Adjustment has been criticized by some on the ground that it constitutes compulsory arbitration. This is denied by the railway labor organizations, who point out that the National Board of Adjustment has jurisdiction only over grievances that arise out of the application and interpretation of rules. The settlement of such grievances and the enforcement of decisions of the adjustment board is merely applying the judicial process to the adjudication of grievances. The fundamental proposition of *changes* in wages, hours and working conditions is still a matter of direct negotiations between the carriers and the unions representing the employees. The mediation and arbitration provisions of the original Railroad Labor Act remain intact, and arbitration in these matters is purely voluntary."

This article was by George M. Harrison, then chairman of the legislative committee of the *amicus* Railway Labor Executives Association. Because they are fearful of his 1934 testimony, an effort has been made by petitioners to depict Mr. Harrison as a simple "laboring man" (Br. 16) and the brief of the *amicus* RLEA does not even mention his vital 1934 testimony! Those members of this Court who have served in Congress undoubtedly will agree with respondents that he would be very familiar with legislation he was championing. His position in his field of work can be suggested by this thumbnail sketch: presently, vice president of the AFL-CIO; for years chairman of *amicus* RLEA; prior to 1934 and up to the present, president of the Brotherhood of Railway Clerks.

Since petitioners and their *amici* have exerted great efforts to make the legislative history of the 1934 statute ap-

pear to be equivocal, a rather detailed discussion of its legislative history must be conducted at this stage. The discussion is organized to show what the legislative committees were told, what those committees reported, and what Congress was told it was voting upon.

1. *Committee Hearings.*

(a) *Hearings before the House Committee on Interstate and Foreign Commerce, 73d Cong., 2d Sess. (1934) on H.R. 7650.*

First, Commissioner Joseph B. Eastman, Federal Coordinator of Transportation, testified as to the 1934 amendments, which he had "very largely drafted" (*Elgin J. & E. R. Co. v. Burley*, 325 U. S. 711, 723, note 16). Commissioner Eastman complimented the unions on conceding the right to strike in return for the procedures of the Board (p. 47, ff.). He had his legal advisor, Mr. Carmalt, answer questions as to the legality of strikes over grievances, and Mr. Carmalt indicated that such strikes were enjoinable (pp. 62-63).

Commissioner Eastman's first reference to concessions is at page 47:

"* * * very disturbing conditions have at times been created, especially in recent months. In at least four important instances, strike votes (because of piled up grievances) have been taken for the purpose of creating an emergency which would justify the President in appointing a fact-finding board, so that these grievances and similar controversies might be passed upon by an impartial body. In two of these instances the controversy was adjusted by the parties without the appointment of such a board, but in the two others fact-finding boards became necessary and were appointed.

"The bill before you, H. R. 9689, attempts to remedy both of these deficiencies in the present law. It provides for the creation of a national adjustment board

to which unadjusted 'disputes * * * growing out of grievances or out of the interpretation or application of agreements * * * may be referred. Please note that disputes concerning changes in rates of pay, rules, or working conditions may not be so referred, but are to be handled, when unadjusted, through the process of mediation. The national adjustment board is to handle only the minor cases growing out of grievances or out of the interpretation or application of agreements. Provision is also made so that deadlocks will be impossible. When the regular members, who will be equally divided between the two sides, disagree, they must call in a neutral member appointed by the mediation board to decide the case. The willingness of the employees to agree to such a provision is, in my judgment, a very important *concession* and one of which full advantage should be taken in the public interest. I regard it as, perhaps, the most important part of the bill." (Emphasis supplied.)

At page 55 the following colloquy occurred between Commissioner Eastman and Representative Cooper:

"Mr. Cooper. Well, what I had in mind was this: There will probably be many disputes that might be settled between employees and the carriers without them being carried to this national board of adjustment.

"Commissioner Eastman. Oh; absolutely.

"Mr. Cooper. And this is only in the last resort.

"Commissioner Eastman. That is right.

"Mr. Cooper. In case the carriers and the employees cannot get together in conferences, then *as a last resort*, it goes to one of these four divisions of the National Board of Adjustment for settlement.

"Commissioner Eastman. That is correct." (Emphasis supplied.)

Then Mr. Eastman answered questions from committee members as follows (at pp. 58-61).

"Mr. Peftengill. And this act does not make a matter of agreeing to arbitrate a matter of discretion? It makes it a matter of duty on the part of the parties to this dispute.

"Commissioner Eastman. Yes; and it is my understanding that the employees in the case of these minor grievances—and that is all that can be dealt with by the adjustment board—are entirely agreeable to those provisions of the law.

"I think that is a very important *concession* on their part. . . . (Emphasis supplied.)

"Commissioner Eastman. In my answer to you I said there was nothing in the act which provided for the enforcement of those particular decisions. That answer would not apply to decisions of the adjustment board, and they are made final and binding by the terms of this act, and as I understand it, the labor organizations, none of them, are objecting to that provision. They have their day in court and they have their members on the adjustment board, and if an agreement cannot be reached between the parties representing both sides on the adjustment board, a neutral man steps in and renders the decision, and they will be required to accept that decision when made, with respect to these minor matters. They are not the major issues which arise in the labor world. It has to do with the settlement of these grievances. Page 16 defines the disputes which are to be referred.

'The disputes between an employee or group of employees and a carrier or carriers growing out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions.'

"Now, the proviso on page 10 protects the individual

who wants to walk out but it does not cover collective action in walking out.³

"Mr. Pettengill. Your interpretation there, Mr. Commissioner, would be that under the language at the bottom of page 17, although the individual may be free to walk out, the organization would not be free to call a strike after an award had been made on these matters that are covered by the language at the bottom of page 17.

"Commissioner Eastman. Well, that is my understanding; yes sir.

"Mr. Lea. Under that proviso, in the tenth subdivision, do you take it that that draws a distinction between an individual quitting employment and the employees agreeing collectively to quit?

"Commissioner Eastman. Yes sir. . . .

"Commissioner Eastman. Well, as I say, you have exactly similar provisions in the present labor act with respect to decisions by adjustment boards and where they agree to arbitration, and this law is in effect an agreement on the part of the parties to arbitrate all of these minor disputes.

"The Chairman [Mr. Rayburn]. Was that not one of the reasons, to try to keep down strikes to get people together?

"Commissioner Eastman. Yes. It is a very important part of it. The willingness of the employees to agree to a provision of that sort seemed to me to be a very important and praiseworthy thing.

3. This refers to the proviso in Section 2 Tenth (45 U.S.C. 152 Tenth), which conforms the Railway Labor Act to the Thirteenth Amendment of the Constitution by confirming the right of any individual to refuse to work no matter what limitations other Sections of the Act place upon the power of his union to call a strike. The instant decree observes that proviso to the letter (R. 50).

"Commissioner Eastman. Well, it is my own opinion that there ought not to be strikes with reference to minor grievances of that sort. I should be very unwilling to take away from the employees the right to strike on major issues, but these are not major issues."

Mr. Eastman was asked whether the bill prohibited strikes over grievances. Mr. Eastman asked his legal advisor, Mr. Carmalt, to answer this. Mr. Carmalt was one of those who drafted the amendments. He testified as follows (pages 62-63):

"Mr. Wolverton. Was it the purpose in this act to confer the right to enjoin an organization from disputing a decision made by the Board?"

"Mr. Carmalt. The original House bill on this question, was drawn by the employees and the language was, I think, brought directly over in the same form that the employees presented it.

"The question has not arisen therefore, before this morning, and I am more or less thinking out loud in connection with it, because of that fact, but it has seemed to me that the implication lay, from the form of the bill, that a strike on account of these minor grievances would not be permitted and might be enjoined. . . .

"Mr. Carmalt. My opinion is that there should not be the right to strike over grievances of this kind where the Government has provided the machinery whereby the grievances may be considered by an impartial board.

"Mr. Wolverton. Do you think that the language that has been referred to by Mr. Eastman, as conferring this absolution, so to speak, so far as an employee is concerned [see note 3, *supra*] would provide equal protection to the organization itself?"

"Mr. Carmalt. No; I think this injunction would run

rather as against a strike. There is no other means of resisting the order. But, as to an individual quitting, I think the absolution would be effective.

"Mr. Wolverton. Do you think that the absolution that has been given the employee should likewise be given to the organization?

"Mr. Carmalt. Oh, no.

"Mr. Wolverton. What?

"Mr. Carmalt. No.

"Mr. Wolverton. What did you say?

"Mr. Carmalt. No. The employees, in their drafting of the bill, put that absolution in, and in redrafting the bill we took the language of the present act which would not give that absolution to the organization.

"Mr. Wolverton. So then you assume that under the provisions of this bill an injunction could issue to prevent an organization from going on strike?

"Mr. Carmalt. Such an injunctive process as might be necessary to prevent the strike growing out of the settlement of grievances under Section 3, I should believe would lie."

After Commissioner Eastman was finished, George M. Harrison, then and now chief executive of the Brotherhood of Railway and Steamship Clerks, acted as the spokesman of the unions, including the Trainmen and *amicus* Brotherhood (p. 77). When he came to the place to discuss the New Section 3, he did not dispute Commissioner Eastman's and Mr. Carmalt's expression that the Railway Labor bill contemplated that grievances must be adjudicated by the Adjustment Board and that strikes over them were enjoined. Instead, he testified (p. 83):

"* * * we believe that it is in the interest of our indus-

try and we believe it is in the interest of the people of this country to maintain peace on these railroads and adjust our controversies [over grievances] in an enlightened and intelligent fashion."

Mr. Harrison gave testimony as to the unsatisfactory working of the then law as to adjustment boards and said (pp. 81-82):

"So, out of all of that experience and recognizing the character of the services given to the people of this country by our industry and how essential it is to the welfare of the country, these organizations have come to the conclusion that in respect to these minor-grievance cases that grow out of the interpretation and/or application of the contracts already made that they can very well permit those disputes to be decided, if they desire to progress them, to be decided, by an adjustment board."

That Mr. Harrison did accept the official interpretation is indicated by the fact that not a single one of the detailed amendments which he suggested changed the official interpretation that the bill made strikes over grievances enjoined (pp. 93-94).

In the House Hearings, Mr. Harrison concluded his description of the Adjustment Board as follows (p. 89):

"* * * it [the Adjustment Board] is a fire department to settle disputes. We hope the parties will get together and settle their disputes without the need or use of this machinery, and it is a fire department for the purpose of settlement."

* He was stating that the Adjustment Board was to be an omnipresent force to settle grievances if the parties could not do so themselves. The Adjustment Board was to be the "fire department" in lieu of resort to economic duress.

Finally, Thomas P. O'Brien, representing the International Brotherhood of Teamsters, also recognized that Section 3 First substituted compulsory adjustment for strikes over grievances. He testified in opposition to Section 3 First as follows (at p. 118):

"We are unalterably opposed to paragraph M, starting on line 19, page 17. This paragraph brings about compulsory arbitration and prevents the use of the only weapon in the hands of organized labor. We believe that a very dangerous precedent would be established with the passage of this paragraph, and to the best of our knowledge it is the first time that any such measure has been enacted by the Congress of the United States. Labor has the right to use the economic strength of their organizations to bring about a betterment of wages and working conditions for the workers of the United States, but with the passage of this paragraph into law that economic force and strength is taken away.

"It was argued by some in this hearing that individual members had the right to quit their employment at any time. While that right is not denied the individual, it is denied the members of the union collectively, and leaves the way open to the courts to enjoin by injunction organizations, their officers and their members, for striking against a decision of a board of mediation [Adjustment Board] which they did not favor. * * * Arbitration should be definitely left to the judgment of both sides to the dispute, by which they have a right, as they have today, to voluntarily submit a controversy to arbitration and by that process to agree in individual cases to accept the decision of the arbitrator as being final and binding on both sides. That is something that may be accomplished by agreement, but we believe it to be unfair to make it a matter of law, which will compel arbitration on both sides under penalty of law."

Clearly there was no misunderstanding at this time as to the meaning and effect of the proposed statute, even by the few who opposed its enactment.

(b) *Hearings before the Senate Committee on Interstate Commerce, 73d Cong., 2d Sess. (1934) on S. 3266.*

Similar statements were made before the Senate Committee which considered this legislation.

Commissioner Eastman, the principal author of the 1934 Railway Labor Act, was the first witness before the Senate Committee. He quoted with approval from the report of a presidential emergency fact-finding board (composed of the Chief Justice of the Supreme Court of North Carolina, an admiral of the Navy, and a professor of Yale Law School) on the Delaware & Hudson Railroad to the effect that the Adjustment Board provisions of the 1926 Railway Labor Act should be made mandatory (p. 16). In the following passage he praised labor for conceding the right to strike over grievances in exchange for the Adjustment Board machinery specified in Section 3 First (p. 17):

"The willingness of the employees to agree to such a provision is, in my judgment, a very important concession and one of which full advantage should be taken in the public interest. I regard it as, perhaps, the most important part of the bill."

He regarded Section 3 First as the most important part of the bill because it was designed to provide a substitute for strikes over grievances.

Consonant only with the theory that Section 3 First banned strikes over grievances, is the inclusion of a new proviso limiting the scope of injunctions and protecting in-

dividual, as distinguished from collective, action. This proviso (Section 2, Tenth) reads:

"Provided, That nothing in this Act shall be construed to require an individual employee to render labor or service without his consent, nor shall anything in this Act be construed to make the quitting of his labor by an individual employee an illegal act; nor shall any court issue any process to compel the performance by an individual employee of such labor or service, without his consent."

As Mr. Eastman stated concerning this proviso (at p. 24):

"What is now in the bill goes a little beyond that by speaking of a number of employees collectively, and *the act is intended to prohibit strikes under certain circumstances*, for example, the 60 days during which the fact-finding board is to act." (Emphasis supplied.)

He criticized the railroads' proposed amendments to the adjustment provisions of the 1926 Railway Labor Act because they would not permit a court to "find a firm basis for an injunction" (at p. 153).

In closing his testimony before the Senate Committee, Mr. Eastman described the proposed Adjustment Board as "the final arbiter" (at p. 154).

At the Senate Committee hearings the unions, including the present petitioners, were again represented by Mr. Harrison of the Clerks.

At page 27 of the Senate Hearings, Mr. Harrison introduced himself as follows:

"My name is George M. Harrison, Cincinnati, Ohio, president of the Brotherhood of Railway Clerks. I appear here as the chairman of the legislative committee of the Railway Labor Executives Association, speak-

ing for the 21 standard railway labor organizations, the list of which I file with the reporter.

"The Chairman [Senator Dill]. It will be printed at this point in the record.

"(The list referred to above is as follows:)

"• • • Brotherhood of Railroad Trainmen."

Mr. Harrison then went through the proposed amendments, making clear that labor supported them, except where he offered changes.

Mr. Harrison testified (at p. 31):

"Then the machinery [of Section 3 First (i)] provides that these controversies [grievances] will be handled in conference in the usual manner, hoping that they will be settled between the parties at home. If they cannot be settled, then they go to this board."

At page 33 Mr. Harrison said:

"Grievances are instituted against railroad officers' actions, and we are willing to take our chances with this national board because we believe, out of our experience, that the national board is the best and most efficient method of getting a determination of these many controversies that arise on these railroads between the officers and the employees."

The following colloquy took place between Senator Dill, chairman of the Senate Committee on Interstate Commerce, and Mr. Harrison (Senate Hearings, p. 34):

"The Chairman. Do you have regional boards also?

"Mr. Harrison. No sir. The situation is this, Senator: The bill provides in the first instance for the setting up of a national board. Now, we say to the parties: 'You don't need to use this national board if you can't [can] agree with your men back home to set up a [system] board in lieu of that national board.'

"The Chairman. That is a system board?"

"Mr. Harrison. A system board, or a regional board, or a group board, 'If you do set it up, then you are exempt from the national board.'

.

"The Chairman. I just want to get this clear. Then the local and regional of [or] the system board[s] are voluntary?"

"Mr. Harrison. They are voluntary."

"The Chairman. And if either party refuses, there is no way to compel them [the setting up of local, regional, or system boards], and that matter would necessarily go to the National Board?"

"Mr. Harrison. That is right. * * *"

(Emphasis supplied.)

At page 35 of the Senate Hearings, Mr. Harrison discussed the proposed amendments in Section 3 First:

"These railway labor organizations have always opposed *compulsory determination* of their controversies.

* * * we are now ready to concede that we can risk having our grievances go to a board and get them determined, and that is a contribution that these organizations are willing to make.

"I just want to tie this tail on to that kite—if I may express it that way—that if we are going to get a hodgepodge arrangement by law, rather than what is suggested by this bill, then we don't want to give up that *right*, because we only give up the *right* because we feel that we will get a measure of justice by this machinery that we suggest here." (Emphasis supplied.)

In this passage, Mr. Harrison stated that railroad labor organizations were giving up the right to strike over grievances in return for the 1934 Adjustment Board machinery,

which makes awards of the Adjustment Board judicially enforceable against carriers (Section 3 First (p)).

Mr. Harrison proposed the present form of Section 3 Second with its provision for agreed-upon system boards of adjustment and for election by either party to return to the jurisdiction of the Adjustment Board if dissatisfied with a system board. Mr. Eastman's version had not contained this. Mr. Harrison explained (at p. 38):

"That amendment [Section 3 Second] is designed to permit freedom of the parties to set up either kind of this machinery which we designate [system, group or regional boards of adjustment], if they do not want to go to the national board [the Adjustment Board] with their grievances." (Emphasis supplied.)

Thus Mr. Harrison was reiterating that grievances must be resolved by the Adjustment Board unless the parties agree to substitute system, group, or regional boards.

Mr. Harrison also filed a supplemental statement with the Senate Committee at pages 162-168 of the Senate Hearings. This statement mentioned the opposition to the Adjustment Board as follows (at p. 167):

"Brought face to face, finally, with the prospect of *compulsory settlement* of grievance disputes, railway managements have urged upon the committee the desirability of regional boards of adjustment instead of a national board." (Emphasis supplied.)

Louis R. Gwyn of the Railway Express Agency agreed that the bill provided for "compulsory arbitration" by the Adjustment Board (p. 110).

At these same Senate Hearings the railroads were represented by Martin W. Clement, then vice president of the Pennsylvania Railroad Co., and appearing as chairman of the Railway Labor Act committee of all the railroads.

At page 67, speaking of grievances, Mr. Clement said:

"Men and management are agreed that what they want is compulsory, prompt, and equitable settlement of disputes."

At page 69 Mr. Clement said, with respect to adjustment boards:

"When men and management sat down 8 years ago, neither side was willing to write into that [1926] act compulsion. We have experienced the act for 8 years, and both sides are now willing to sit down together and write in compulsion. * * *"

Mr. Clement executed an uncontroverted affidavit (R. 22-23) which was attached to the plaintiffs' motion for preliminary injunction in this case. This affidavit shows that Mr. Clement became very familiar with the 1934 legislation. It also shows that he conferred frequently with representatives of labor and government concerning this legislation. Mr. Clement then states (R. 22-23):

"6. Under that legislation, when employees and carriers fail to reach an adjustment of such disputes [over grievances or the interpretation of collective bargaining agreements] and wish to have them settled, the disputes must be referred to the National Railroad Adjustment Board for decision pursuant to Section 3 First (i) of the Railway Labor Act.

"7. In order to avoid interruptions to commerce, the Railway Labor Act, as amended in 1934, established the National Railroad Adjustment Board to decide such disputes and prohibited strikes over them. Congress substituted administrative processes for strikes in this area."

2. *Committee Reports.*

The Senate and House committee reports accompanying the 1934 Railway Labor bill confirm the compulsory nature of the Adjustment Board. The Senate Report, which was

entitled "Board To Settle Disputes Between Carriers And Their Employees," stated that the bill makes "several far-reaching and important changes in the operation of the Adjustment Board to settle grievances * * *. The most important change in the bill is the creation of what is termed the 'National Adjustment Board.'" Then the Senate Report stated (emphasis supplied):

"Both representatives of the carriers and of the employees agree that the setting up of boards for the settlement of disputes should be made *compulsory*, when necessary. Representatives of the carriers proposed that the setting up of regional boards be made *compulsory*; representatives of most of the employees insisted that the setting up of the National Board of Adjustment with four divisions be made *compulsory*.

* * * * *

"The ideal situation would be to have disputes and grievances settled by the men and management on the several properties without any recourse to adjudication by an outside tribunal. Some of those advocating this legislation believe the fact that here is a *compulsory* board to which grievances may be taken will greatly increase the settlement of disputes by voluntary adjustment boards between the employees and the railroads." (Senate Report No. 1065 (73d Cong. 2d Sess.) pp. 1-2.)

The House Report stated (emphasis supplied):

"The purposes of this bill are:

* * * * *

"3. To provide for the prompt and orderly settlement of all disputes growing out of grievances and out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions, so as to avoid any interruption of commerce or of the proper operation of any carrier engaged therein.

* * * * *

“Analysis Of The Bill

“(Section 3)

“7. The second major purpose of the bill is to provide sufficient and effective means for the settlement of minor disputes known as ‘grievances,’ which develop from the interpretation and/or application of the contracts between the labor unions and the carriers, fixing wages and working conditions. The present Railway Labor Act provides for the establishment of boards of adjustment by agreement. In many instances, however, the carriers and the employees have been unable to reach agreements to establish such boards. • • •

“Many thousands of these disputes have been considered by boards established under the Railway Labor Act; but the boards have been unable to reach a majority decision, and so the proceedings have been deadlocked. *These unadjusted disputes have become so numerous that on several occasions the employees have resorted to the issuance of strike ballots and threatened to interrupt interstate commerce in order to secure an adjustment. This has made it necessary for the President of the United States to intervene and establish an emergency board to investigate the controversies. This condition should be corrected in the interest of industrial peace and of uninterrupted transportation service.* This bill, therefore, provides for the establishment of a national board of adjustment to which these disputes may be submitted if they shall not have been adjusted in conference between the parties.” (House Report No. 1944 (73d Cong. 2d Sess.) pp. 1-3)

The House Report also stated (at p. 4):

“If such voluntary machinery [system boards] should be established, then the parties are exempt from the jurisdiction of this National [Railroad Adjustment] Board.” (Emphasis supplied.)

3. Congressional Debates.

There was little discussion of the 1934 Act on the floor of either House of Congress. The bill was considered at the close of a busy session and was presented as urgent legislation which the President wanted badly.

In the Senate the proponents of the Act introduced and relied upon an explanatory letter from the Secretary of Labor and Commissioner Eastman (the principal author of the amendments) to President Roosevelt which described the Adjustment Board amendments as designed to "provide for compulsory adjustment of individual grievances" and to stop "strike threats" over grievances (78 Cong. Rec. 12375; see *supra*, p. 26).

Senator Dill, who was in charge of the Railway Labor bill in the Senate, stated (78 Cong. Rec. 12083):

"I am asking to take up proposed legislation which will take charge of the situation so far as the railroad laboring men are concerned. *There is no legislation on the statute books today to prevent a great railroad strike or to bring about settlement of their disputes.*

"The bill has in it provisions which the railroad employees of the country and their organizations are backing. They have agreed to submit to compulsory arbitration of their [grievance] disputes. That is a new thing in the labor world. That is something which has not been secured in any prior labor legislation that has been proposed." (Emphasis supplied.)

In the House, Representative Crosser, the House manager, stated (78 Cong. Rec. 11714):

"The bill when enacted into law will do much to establish industrial peace in this country: *It provides for an appeal to reason rather than to force.* It gives every man employed by railroads an opportunity to be heard

by an impartial tribunal [the Adjustment Board]. It will set a precedent for labor of every kind in the United States for the establishment of the correct method to be pursued for the establishment of peace in industry." (Emphasis supplied.)

In opposing the bill, Representative Merritt stated (78 Cong. Rec. 11714):

"This bill violates to a very considerable extent the underlying principles of that [1926 Railway Labor] bill, because it involves a certain amount of force and coercion which does not tend to peace." (Emphasis supplied.)

In support of the bill, Representative Martin stated (78 Cong. Rec. 11718):

"It will create instrumentalities for a peaceful adjustment of disputes in the railway service, and Congress may go home with the knowledge that it has done its full duty to insure peace in the railway world."

Representative Rayburn stated (78 Cong. Rec. 11720):

"Mr. Speaker, when strikes are threatened, and when many of them are going on, I trust that we may keep peace and harmony in the great transportation industry. I believe that this bill will do as much as or more than anything that has been proposed to bring about that happy circumstance. Therefore, I trust that there will not be a vote in the House against this bill that I believe is fair to both employer and employee."

The foregoing excerpts from the debates in Congress show that the legislators understood from the sponsors that the 1934 Act provided for the compulsory adjustment of grievances, and voted in the light of that understanding.

In 1934 the unions, having found the enforcement of grievances by strike to be too burdensome, asked Congress

to replace the prior chaos with orderly procedure. Congress complied by creating the mandatory Adjustment Board procedure, a procedure the unions had sought since their World War I experience with adjustment boards during federal management of the railroads. After 20 years of understanding that the Adjustment Board procedure is mandatory, the Trainmen now insist that they can disregard it at their will.

4. *Petitioners' Statement of the 1934 Legislative History Is Misleading.*

Petitioners' doubts as to their present interpretation of the Railway Labor Act are reflected in the paucity of the legislative history quoted in their brief. For example, only the earlier statements of Congressmen Pettengill and Cooper are quoted before the discussion of injunctions against strikes over grievances really got under way and before the proviso in Section 2 Tenth was explained to the House Committee. Moreover, the highly significant explanations by Commissioner Eastman and his legal advisor, Mr. Carmalt, have been vitally truncated. It is significant that the brief of the *amicus* Brotherhood completely omits Mr. Carmalt's discussions with respect to enjoining strikes over grievances. It is necessary to refer to respondents' brief for a complete understanding of the pertinent legislative history. Although *amicus* Brotherhood claims that Commissioner Eastman was of the view that no authorization for injunctions against strikes over grievances should be included in the 1934 Railway Labor Act (Br. 5), the Brotherhood neglects to add that this was because Commissioner Eastman's legal advisor advised that no specific authorizations for injunctions would be necessary. (See *supra*, pp. 32-33.) The hearings also reveal that Commissioner Eastman was familiar with *Texas & N. O. R. Co. v.*

Brotherhood of R. & S. Clerks, 281 U. S. 548, holding that the Railway Labor Act should be enforced through the issuance of injunctions despite the absence of statutory enforcement provisions (see Senate Hearings, pp. 147-148; House Hearings, pp. 24-25). It must be noted that Commissioner Eastman's final remarks on the problem were that Section 3 First (i) does "provide for compulsory adjustment of individual grievances" in order to avoid strikes (78 Cong. Rec. 12375).

Besides ignoring the salient testimony of Mr. Eastman and Mr. Carmalt, petitioners quote only one sentence of George Harrison, the legislative representative of petitioners and the other 20 standard unions at the 1934 Hearings. The reason, of course, is that petitioners wish to shy away from Mr. Harrison's statements that the right to strike was being given up in return for compulsory Adjustment Board machinery provided in the 1934 Act. This Court has already recognized that great weight must be given to Mr. Harrison's views (*Elgin, Joliet & Eastern Railroad v. Burley*, 325 U. S. 711, 718, note 24). This is especially so when they coincide with Commissioner Eastman's views (cf. Petitioners' Br. 16).

Since the clear legislative history shows that Congress was enacting compulsory arbitration of grievances, certainly Congress would not simultaneously intend to make its enactment unenforceable by virtue of the Norris-La Guardia Act. In this connection, it should be observed that petitioners have been unable to refer to any legislative history to show that Congress intended the Norris-La Guardia Act to apply to this situation. They can find no such legislative history because Congress would surely not intend to hamstring completely the 1934 Adjustment Board provisions by the 1932 statute.

5. *1950 Legislative History Is Entirely Irrelevant in Interpreting 1934 Railway Labor Act.*

A great deal of the two *amici curiae* briefs on petitioners' side is devoted to the 1950 legislative history of a certain bill in Congress. However, petitioners have abandoned this point, evidently bowing to the traditional rule of statutory construction that subsequent legislative history should not be used in construing prior statutes. As this Court stated in *United States v. Rumely*, 345 U.S. 41, 48:

"What was said in the debate on August 30, 1950, after the controversy had arisen regarding the scope of the resolution of August 12, 1949, had the usual infirmity of *post litem motam*, self-serving declarations."

This familiar rule has been frequently applied by this Court. Other recent examples include *Fogarty v. United States*, 340 U.S. 8, 13-14, *Packard Motor Car Co. v. National Labor Relations Board*, 330 U.S. 485, 492, and *United States v. United Mine Workers*, 330 U.S. 258, 281-282. Therefore, none of the 1950 legislative statements relied upon by these *amici curiae* should be considered in construing the 1934 Railway Labor Act.

Even if the 1950 proposed amendment could be considered, it does not help petitioners' case. The principal purpose of the Donnell bill was to prohibit strikes over the "major disputes". The respondents have not contended that the Railway Labor Act prohibits strikes over the "major disputes" after the procedures of the Act have been exhausted. Insofar as preventing strikes over grievances is concerned, the Senate Committee apparently concluded that no clarifying amendment was necessary since the 1934 Act already provided compulsory Adjustment Board machinery to handle the "minor disputes". The

Donnell bill died in Committee not only because it prohibited strikes over major disputes, but also because it permitted any interested person to bring an action to review a decision of the Adjustment Board.

In addition to the text of the bill, the Senate Report on the Donnell bill states only as follows:

"The Committee on Labor and Public Welfare, to whom was referred the bill (S. 3463) to amend the Railway Labor Act, as amended, so as to prevent interference with the movement of interstate commerce, and for other purposes, having considered the same, report unfavorably thereon, with amendments, and recommend that the bill, as amended, do not pass." (S. Rep. No. 2445, 81st Cong., 2d sess.)

As stated in *Trailmobile Co. v. Whirls*, 331 U.S. 41, 61, "The interpretation of statutes cannot safely be made to rest upon mute legislative maneuvers." Similarly, in *Wong Yang Sung v. McGrath*, 339 U.S. 33, 47-48, the Court refused to draw any inference from a bill which had been reported favorably by Committees of both Houses but which received no further action before adjournment. The *Wong Yang Sung* rule applies *a fortiori* here, for the only Committee that considered the Donnell Bill reported it unfavorably. Cf. *Order of Railway Conductors v. Swan*, 329 U.S. 520, 529.

To the extent that the 1950 bill indicated a fear that the intent and spirit of the Railway Labor Act were being ignored, such "abortive attempt at clarification" should not be allowed to affect the interpretation of the earlier statute. *City of New York v. Saper*, 336 U.S. 328, 340.

The briefs of *amici* Brotherhood and RLEA cite the statements of many witnesses on the Donnell bill. Most of the railroad witnesses stated that such strikes are contrary

to the scheme of the Railway Labor Act. One railroad witness did indicate his belief, erroneous we believe, that the present Railway Labor Act does not forbid such strikes. The other witnesses did not say one way or the other because that question was not before the hearing. These spokesmen really did not attempt to restate the law but instead were advancing contentions in favor of another statute.

Mr. Harrison testified in opposition to judicial review of Adjustment Board decisions. In the course of his testimony he made one remark which implies that a strike of the kind in issue here would be legal, although this was not the subject of his testimony, and therefore we do not know if he really meant such implication. Such implication is at war with what he told Congress and what he told his fellow A. F. of L. members in 1934 (see *supra* pp. 27, 33-34, 37-40) and must be discounted. Contemporaneous testimony is of course far more trustworthy (*United States v. Rumely*, 345 U.S. 41, 48).

Even in the 1950 hearings on the Donnell bill, president William Green of the American Federation of Labor testified:

"Except for disputes over the interpretation and application of existing agreements, *which must be adjudicated by the Adjustment Board*, the [Donnell] bill applies to all disputes of whatever nature in the railroad industry, and regardless of how few employees may be involved, and regardless of whether a substantial or, indeed, any interruption to interstate transportation is threatened, and regardless of whether any emergency situation imperiling public health and safety has been created." (Hearings on S. 3463 before subcommittee of Senate Committee on Labor and Public Welfare, 81st Cong., 2d sess., p. 383.) (Emphasis supplied.)

C. This Court Has Acted for Years on the Understanding That the Adjustment Board Procedure Is Mandatory.

In *Elgin J. & E. R. Co. v. Burley*, 325 U. S. 711, the Court adverted to the distinct differences in the statutory treatment of the "major disputes," which concern the making of collective agreements, and the "minor disputes," i.e., grievances. The Court pointed out that Congress has left the settlement of major disputes "entirely to the processes of noncompulsory adjustment" (325 U. S. at p. 724). In contrast, the Adjustment Board was established for the compulsory determination of grievances when not settled by agreement, as shown in the following passage from the *Burley* case (325 U. S. at pp. 725-728):

"The course prescribed [by the Railway Labor Act] for the settlement of grievances is very different beyond the initial stage. Thereafter the Act does not leave the parties wholly free, at their own will, to agree or not to agree. On the contrary, one of the main purposes of the 1934 amendments was to provide a more effective process of settlement.

"Prior to 1934 the parties were free at all times to go to court to settle these disputes. Notwithstanding the contrary intent of the 1926 Act, each also had the power, if not the right, to defeat the intended settlement of grievances by declining to join in creating the local boards of adjustment provided for by that Act. They exercised this power to the limit. Deadlock became the common practice, making decision impossible. The result was a complete breakdown in the practical working of the machinery. Grievances accumulated and stagnated until the mass assumed the proportions of a major dispute. *Several organizations took strike ballots and thus threatened to interrupt traffic, a factor which among others induced the Coordinator of Transportation to become the principal author and advocate of the amendments.* The sponsor in the House insisted

that Congress act upon them before adjournment for fear that if no action were taken a railroad crisis might take place. The old Mediation Board was helpless. To break this log jam, and at the same time to get grievances out of the way of the settling of major disputes through the functioning of the Mediation Board, the Adjustment Board was created and given power to decide them.

"The procedure adopted is not one of mediation and conciliation only, like that provided for major disputes under the auspices of the Mediation Board. Another tribunal of very different character is established with 'jurisdiction' to determine grievances and make awards concerning them. Each party to the dispute may submit it for decision, *whether or not the other is willing*, provided he has himself discharged the initial duty of negotiation. § 3 First (i). Rights of notice, hearing, and participation or representation are given. § 3 First (j). In some instances judicial review and enforcement of awards are expressly provided or are contemplated. § 3 First (p); cf. § 3 First (m). When this is not done, the Act purports to make the Board's decisions 'final and binding.' § 3 First (m).

"The procedure is in terms and purpose very different from the preexisting system of local boards. That system was in fact and effect nothing more than one for what respondents call 'voluntary arbitration.' No dispute could be settled unless submitted by agreement of all parties. When one was submitted, deadlock was common and there was no way of escape. The Adjustment Board was created to remove the settlement of grievances from this stagnating process and bring them within a general and inclusive plan of decision. The aim was not to dispense with agreement. It was to add decision where agreement fails and thus to safeguard the public as well as private interests against the harmful effects of the preexisting scheme." (Emphasis supplied; footnotes omitted.)

In supporting the foregoing passage from the Court's opinion, Justice Rutledge underscored the testimony of Mr. Harrison, the Trainmen's representative, that the Adjustment Board was to provide "compulsory determination" of grievances and that, in return for that legislation, labor was giving up the "right" to strike over grievances (325 U. S. at p. 728, note 24).

In the *Burley* case, the Court stressed the necessity of exhausting the possibility of agreement under the Railway Labor Act. The Court stated (Note 12, pp. 721-722):

"Thus, one of the statute's primary commands, judicially enforceable, is found in the repeated declaration of a duty upon all parties to a dispute to negotiate for its settlement. See note 26 [referring to Section 3 First (i) and other Sections of the Railway Labor Act]; *Virginian R. Co. v. System Federation*, 300 U. S. 515; cf. *Switchmen's Union v. National Mediation Board*, 320 U. S. 297, 300, 320; *General Committee v. M.-K.-T. R. Co.*, 320 U. S. 323, 331, 334. This duty is not merely perfunctory. Good faith exhaustion of the possibility of agreement is required to fulfill it. Cf. *Virginian R. Co. v. System Federation*, *supra*, at 548, 550; *Trainmen v. Toledo, P. & W. R. Co.*, 321 U. S. 50, 56 ff. At successive stages of the statutory procedure other duties are imposed. Cf. §§ 5 First (b), 6, 10."

Even as to the major disputes, the Court stated in the *Burley* case (325 U. S. at p. 725):

"The parties are required to submit to the successive procedures designed to induce agreement. § 5 First (b). But compulsions go only to insure that those procedures are exhausted before resort can be had to self-help."

A fortiori, in the case of this minor dispute, the Act requires the parties "to submit to the successive procedures

designed to induce agreement" contained in Section 3 First. If under the *Burley* case resort cannot be had to self-help in major disputes until the procedures of the Act are exhausted, surely there can be no resort to self-help in this minor dispute until the procedures of Section 3 First have been exhausted.

One serious Railway Labor Act problem considered, developed, and worked out by this Court has been whether an aggrieved employee may take his grievance to court rather than to the Board. The latest solution of this analogous problem has been that the courts are closed to an aggrieved employee except where he elects to treat his employment as terminated and to rely on his common law rights. Even there, this Court has held that such a former employee may have to submit to the Adjustment Board procedure. *Transcontinental Air v. Koppal*, 345 U. S. 653. The *Koppal* decision assumed that one who does not elect to come out from under the Railway Labor Act must refer to the Adjustment Board any grievances which he wished to progress further. Surely there was no intention of closing the peaceful law of the courts and promoting resort to the "law of the jungle."

In related opinions, the Court has relied on the words of the statute that either party may resort to the Board to prevent the opposing party from litigating the grievances. *Slocum v. Delaware, L. & W. R. Co.*, 339 U. S. 239; *Order of R. Conductors v. Southern R. Co.*, 339 U. S. 255. Here again, there surely was no intention of closing the courts in favor of industrial warfare. This pair of cases held that the Adjustment Board procedure was exclusive and promoted the use of that procedure by preventing attempts to bypass it.

In *Order of R. Conductors v. Southern R. Co.*, 339 U. S.

255, 256-257, the Court referred to the language of Section 3 First (i) as conferring a "privilege" on either party to the dispute to have grievances settled by the Adjustment Board. Here the River Road is endeavoring to exercise that privilege.

The Adjustment Board procedures established in the Railway Labor Act of 1934 were also described in *Slocum v. Delaware, L. & W. R. Co.*, 339 U. S. 239. There the Court stated (at p. 242):

"The first declared purpose of the Railway Labor Act is 'to avoid any interruption to commerce or to the operation of any carrier engaged therein.' 48 Stat. 1186 (§ 2), 45 U.S.C. § 151a. This purpose extends both to disputes concerning the making of collective agreements and to grievances arising under existing agreements. See *Elgin, J. & E. R. Co. v. Burley*, 325 U. S. 711, 722. The plan of the Act is to provide administrative methods for settling disputes before they reach acute stages that might be provocative of strikes. Carriers are therefore required to negotiate with bargaining representatives of the employees. *Virginian R. Co. v. Federation*, 300 U. S. 515, 547, 548. *The Act also sets up machinery for conciliation, mediation, arbitration and adjustment of disputes, to be invoked if negotiations fail.*

"In this case the dispute concerned interpretation of an existing bargaining agreement. Its settlement would have prospective as well as retrospective importance to both the railroad and its employees, since the interpretation accepted would govern future relations of those parties. *This type of grievance has long been considered a potent cause of friction leading to strikes. It was to prevent such friction that the 1926 Act provided for creation of various Adjustment Boards by voluntary agreements between carriers and workers.* 44 Stat. 578. *But this voluntary machinery proved unsatisfactory, and in 1934 Congress, with the support*

of both unions and railroads, passed an amendment which directly created a national Adjustment Board composed of representatives of railroads and unions. 48 Stat. 1189-1193. The Act thus represents a considered effort on the part of Congress to provide effective and desirable administrative remedies for adjustment of railroad-employee disputes growing out of the interpretation of existing agreements. The Adjustment Board is well equipped to exercise its congressionally imposed functions. Its members understand railroad problems and speak the railroad jargon." (Emphasis supplied.)

A strike by the defendants over these grievances pending in the Adjustment Board would disregard the entire plan of the Act to prevent strikes through the establishment of a compulsory Adjustment Board.

In *Transcontinental Air v. Koppal*, 345 U. S. 653, 660, the Court again emphasized that the Railway Labor Act "provides a procedure [the Adjustment Board] for handling grievances so as to avoid litigation and interruptions of service * * *."

The above instances show that this Court has agreed with the belief of the Congressmen who passed the Railway Labor Act, the draftsmen of the Act, and the railroadmen and union leaders who have lived under the Act. Only in recent years have a few men, almost all of whom are concentrated in the four operating unions, purporting to speak for approximately 10% of the union members in the railroad industry, practiced otherwise. For the first decade after the enactment of the Adjustment Board machinery, there were no strikes over grievances, showing that the unions understood the law to be as construed by the Court below. Actually neither the petitioners nor their *amici* have pointed to any strikes over grievances from 1934 to 1949, which is a fair indication that all concerned considered

such strikes to be illegal over the impressive span of 15 years. That is why litigation was unnecessary (cf. RLEA Br. 23; B.L.E. Br. 13). Even after 1949, the number of such strikes per year has been limited.⁴

The reliance by *amicus* Railway Labor Executives Association (Br. 10-11) on *General Committee v. Missouri-Kansas-Texas R. Co.*, 320 U. S. 323, is misplaced, for the discussion therein was directed at the major disputes.

Amicus Brotherhood relies on certain dicta from *Washington Terminal Co. v. Boswell*, 124 F. 2d 235, 247 (C.A.D.C., 1941) and *Moore v. Illinois Central R. Co.*, 312 U. S. 630 (Br. 6-7). The *Boswell* opinion was written by Justice Rutledge in 1941. A few years later he wrote the exhaustive opinion in the *Burley* case which is at war with the *Boswell* dictum. Furthermore, the defendants have failed to quote the important statement in the *Boswell* opinion that "the question [whether a strike would be unlawful] need not now be decided" (124 F. 2d at p. 247). The dictum from the *Moore* case⁵ was directed at the 1926 Act and was not followed by its author, Justice Black, when dealing with the entirely different 1934 adjustment provisions in *Order of R. Conductors v. Southern R. Co.*, 339 U. S. 255, and *Slocum v. Delaware, L. & W. R. Co.*, 339 U. S. 239; see also *Elgin, J. & E. R. Co. v. Burley*, 325 U. S. 711, and *Transcontinental Air v. Koppal*, 345 U. S. 653.

Petitioners' brief refers *passim* to an injunction as a Draconian remedy while disregarding the fact that the Adjustment Board, the instrument chosen by Congress to

4. See the Annual Reports of the National Mediation Board for 1949-1955.

5. Justice Black's dictum in the *Moore* case (312 U. S. at p. 636) relied only upon H. Rep. No. 328 (69th Cong., 1st sess.) p. 4. That Report dealt with the 1926 Railway Labor Act, and the Adjustment Board provisions were of course voluntary under that Act (see *supra*, p. 19).

settle grievances, remains open for a fair consideration of the grievances that reach it. It should be noted that only five to ten per cent of local grievances ever reach the General Committees on the carriers (*amicus* Brotherhood's Br. 36) and of course not all these go as far as the Adjustment Board before they are settled.

The petitioners complained below of the tenor of the River Road's submissions to the Adjustment Board. It should be noted that the petitioners are entitled to file their own submissions there. Proceedings before the Adjustment Board need take no longer than judicial proceedings, claims for reinstatement are given expedited treatment by the Board, and back pay is generally awarded when the Board sustains claims. Therefore, the procedures chosen by Congress for the handling of grievances do not merit the tendered criticism. Moreover, it was the petitioners who refused to accept the proposals of the Mediation Board even though the River Road was agreeable to those proposals. If the petitioners had agreed to the proposals of that neutral Board, none of the delays of which there is now complaint would have occurred.

The argument of the *amicus* Brotherhood that the decision below would destroy the ability of employees to prosecute their grievances before the Adjustment Board (Br. 41) is entirely fallacious. This argument completely overlooks the even membership upon the Board of representatives of the unions and of the carriers. It also overlooks the record of the Board in deciding most cases in favor of the employees. One study found that approximately two-thirds of the decisions had been in favor of labor, and that the percentage would have been higher except that the unions deliberately arranged to present a certain number of "sure losers" so as to adjust the ratio. Northrup and Kahn, Railroad Grievance Machinery: A

Critical Analysis (1952) 5 Industrial & Labor Relations
Rev. 365, 381.

It is untrue that the decision below will impede rather than promote the settlement of grievance disputes, as urged by the *amicus* Brotherhood (Br. 5). Modern thought approves the peaceful adjudication application of already agreed-upon principles. This is an area where experience in labor arbitration and adjustment should be applied, as Congress intended. Under the decision below, the Adjustment Board will be left free to decide these grievances. If its award should be in favor of petitioners, past history teaches that the award would almost certainly be honored (see *amicus* Brotherhood's Br. 38). If not, Congress has given petitioners the statutory remedy of an enforcement suit, with very limited review permitted of the correctness of the award. The *amicus* Brotherhood's professed fear of the Adjustment Board (expressed in Br. 5-6) rings hollow indeed, in view of labor's great success before that Board, which was created by Congress upon the insistence of the railroad unions.

We know of no railroad policy to deny grievances on the property so that they will have to be determined by the Adjustment Board (cf. *amicus* Brotherhood's Br. 39). Moreover, employees cannot gainsay that their treatment by the Adjustment Board has been eminently fair. The good record of carriers' compliance with Adjustment Board awards is attested in the brief of *amicus* Brotherhood (at p. 38). Any railroad management which would follow a policy of denying grievances to force them before the Adjustment Board would be completely without any sense of economics. As already noted, the Adjustment Board regularly awards back pay. Each day's delay may mean to the railroad as much as several thousand dollars.

It cannot be argued that the Adjustment Board procedure is an expense to the employee. His grievance will ordinarily be presented and processed by his Brotherhood. Indeed, the Labor Members of the Board formerly would not tolerate cases submitted by others. Northrup & Kahn, *Railroad Grievance Machinery: A Critical Analysis* (1952), 5 *Industrial & Labor Rel. Rev.* 365; "Railroad Labor Disputes and the National Railroad Adjustment Board," 18 *Univ. of Chicago L. Rev.* 303 (1951).

Finally as to Part I, respondents repeat to the Court that a decision that the adjustment procedure is not mandatory and exclusive would make nonsense of the 1934 amendments to the Act. Such a holding would say that Congress did nothing significant in enacting the 1934 Adjustment Board amendments. A process to which either side may put a halt at will is not useful and would be completely contrary to the construction adopted in the cases that the Act permits either party to disputes to take grievances to the Adjustment Board even though the other party is not willing. Petitioners seem to believe that, for some unexplicable reason, it is better for everybody to be thrown out of work to enforce the demands of a few rather than for everybody to work while those aggrieved are obtaining redress by orderly process! Their view is that the railroads, the unions, and the courts have all been in error for the past years in considering that grievances processed beyond the railroad property have to be taken to the Adjustment Board (or to system boards). The statute, its judicial construction and its legislative history compel the conclusion that grievances must be settled by the Adjustment Board rather than by strike.

II.

**THE NORRIS-LA GUARDIA ACT DOES NOT PREVENT
FEDERAL COURTS FROM ENFORCING THE COM-
MANDS OF THE RAILWAY LABOR ACT.**

Part II of petitioners' brief assumes that Congress prohibited strikes over grievances and yet urges that an injunction is not permissible. Congress certainly did not intend the 1934 Act to be an empty gesture, and even petitioners concede that an injunction is the only adequate remedy (Br. 20). Under the decision below, the Adjustment Board remains open to pass upon these grievances, so that there is nothing Draconian about the remedy awarded (cf. Pet. Br. 21).

Not only do the petitioners themselves try to bypass the Adjustment Board, but they go further and try to ignore the Board even after its jurisdiction has been invoked in this case, for these grievances have been filed before the Board, as contemplated by the collective bargaining contract between petitioners and the River Road, and are now pending there.

The district court originally held that it could not save the situation, because it was rendered powerless by the Norris-La Guardia Act. But this Court has certainly made it clear that the Norris-La Guardia Act does not prevent enforcement of the Railway Labor Act. Any other holding would condemn the country to industrial chaos.

There can be no charge that respondents do not deserve equity because they have not done equity. In fact, the River Road not only exhausted every available means of compromise, it made affirmative efforts to go far beyond any of the normal machinery for compromise or arbitration of the 21 grievances here involved. Here it is petitioners

who have failed to exhaust the administrative remedies afforded by the Railway Labor Act. The River Road did not go into court until there was no other conceivable remedy.

Before examining the power of a federal court to act here, one misconception expressed in all of the various briefs filed on the side of the petitioners must be laid to rest. The respondents did not ask the Court to enjoin a strike which they thought was illegal because the strike violated some contract provisions. The respondents went into court to ask for enforcement of the Railway Labor Act. They relied on the statute, and only on the statute. If the Adjustment Board procedure is not mandatory under the 1934 statute, then they do not claim any other reason for an injunction. Therefore, the various citations and quotations from the many cases, such as *Milk Wagon Drivers Union v. Lake Valley Farm Products, Inc.*, 311 U.S. 91, are immaterial. Those cases are not challenged in any manner here. Respondents' position is merely that the Norris-LaGuardia Act does not prevent the courts from enforcing the Railway Labor Act.

The injunction here does not impinge on the policies of the Norris-LaGuardia Act. This injunction does not take sides—does not help one group rather than the other. This injunction is not like one against a strike over future contract terms. An injunction there may delay the individual employee's bettering his work conditions or his pay. But a strike here is not for future rights. It is over some grievances growing out of past contracts. Employees are not benefited by a strike over grievances; rather, they are benefited when an individual grievance can be settled without throwing everybody else out of work. It has already been noted that the Adjustment Board regularly awards back pay for well-founded grievances, so that delay is dis-

advantageous to the railroad and does not penalize the employees. An injunction here protects all parties and the public by requiring that these grievances be settled by the administrative body which Congress considers capable of handling the matter.

In the *Central of Georgia* case, Judge Brown's dissent forcefully points out why an injunction against strikes over grievances does not upset any balance between the parties and does preserve the public interest. Thus he stated (229 F. 2d at p. 911):

"This does not impinge upon the basic policies reflected in the Norris-La Guardia Act or the elemental rights which seem to inhere in the right to strike. A court of equity is not being used, as was so often formerly the case, to upset the balance or imbalance of competing economic forces in order to give one party, rather than the other, weight or advantage in a private controversy between labor and management. Here a court of equity exerts its power to fulfill the predominant public interest in having provocative (but as here otherwise relatively insignificant) controversies determined by the public agency established by law for that very purpose. In this way the equity court, not ranging on the side of one against the other, adheres strictly to the position of impartial enforcement of law—an imposition on each and both of the duty to use freely, and in good faith exhaust, this statutory machinery for the determination of these controversies."

Cf. Mendelsohn, *Enforceability of Arbitration Agreements under Taft-Hartley Section 301* (1956), 66 Yale L.J. 167, 183.

As stated by the *amicus* Short Line Association, although behind the Norris-La Guardia Act is the laudable purpose of protecting the legitimate interests and activities of organized labor, behind the Railway Labor Act is the equally basic and fundamental purpose of protecting the

public and other railroad employees against the widespread chaos and hardships that result from application of the "law of the jungle" in labor relations on key transportation systems.

A. If the Federal Courts Cannot Enforce the Railway Labor Act, It is Unenforceable.

The Railway Labor Act does not establish any enforcement agencies, as does the Labor-Management Relations Act (Taft-Hartley) in the industrial labor field. The function of the various bodies established under the Railway Labor Act has already been described. The Mediation Board and the Adjustment Board are not administrative agencies empowered to police the area of their authority. The Mediation Board does not make any decisions and does not enforce anything, and this result was deliberately created by Congress (cf. Senate Hearings, pp. 134-135). The Adjustment Board handles such claims as are submitted to it by one or both parties and does not have a general power of inquisition, as does the National Labor Relations Board. The emergency boards are created for only 30 days and can only investigate. Boards of arbitration exist only if the parties create them by agreement.

As a result, if the courts cannot enforce the pertinent mandatory provisions of the Railway Labor Act, those provisions are unenforceable. In other words, if the federal courts are removed from this field of Railway Labor Act enforcement, there is nothing left to fill the void.

The petitioners and the supporting *amici curiae* in this case seek a result which once before was attained in connection with a railway labor act. Title III of the Transportation Act of 1920 (41 Stat. 456, 469) was a railway labor act. It provided an elaborate system for regulating both grievance procedures and collective bargaining, including a

governmental agency called The Railroad Labor Board. The procedures under that Act were said to be mandatory. But this Court also held that these procedures were not enforceable in court. *Pennsylvania R. Co. v. United States Railroad Labor Board*, 261 U. S. 72; *Pennsylvania R. System Federation No. 99 v. Pennsylvania R. Co.*, 267 U. S. 203. Within a year of the prior decision, Congress was considering new legislation. Eventually railroads and Brotherhoods together presented Congress with a draft that became the Railway Labor Act of 1926. The outstanding point made in all the debates on the various bills that came up after these decisions was that the parties had ceased to follow the Act of 1920 except as it struck their fancy or suited their purposes, and as a result that Act was a dead letter and that Board was for most purposes a nonentity. That result would follow as to the present Act if the position of these petitioners is accepted.

If the decision of the court below is reversed, any pretense of making the Adjustment Board procedure a fair one will be dropped. Common sense will dictate to the Brotherhoods that they submit to the Board only the sure winners and strike over all the other grievance disputes regardless of their merits. If such a reversal is carried to its logical conclusion, it will mean that the railroads also may pick and choose which decisions of the Adjustment Board they will follow. The result will be that Section 3 of the Railway Labor Act has been as effectively vetoed as if President Roosevelt had sent it back to Congress in 1934.

Petitioners rely heavily (Br. 22) on *General Committee v. Missouri-Kansas-Texas R. Co.*, 320 U.S. 323, and related "major dispute" cases. These hold that jurisdictional disputes between labor organizations are not justiciable upon the complaint of any party. This follows in line with the same holding under the National Labor Relations Act.

American Federation of Labor v. National Labor Relations Board, 308 U.S. 401. They do not answer any question in the present case.

At stake in this case are not only the interests and welfare of the thousands of employees, the businesses and the communities which will be seriously affected by the irresponsible and reckless actions of the small group here concerned, but also the whole structure of peaceful and orderly procedures for the settlement of grievance disputes erected by the 1934 Railway Labor Act, as observed by the *amicus* Short Line Association. If it should be held that the courts cannot enforce those procedures, that will of course cripple the 1934 Act and will contravene its stated purposes "to avoid any interruption to commerce or to the operation of any carrier" and "to provide for the prompt and orderly settlement of all disputes growing out of grievances" (Section 2, 45 U.S.C. § 151a). Unless the judgment below is affirmed, the prescribed duty of railroad employees and carriers "to exert every reasonable effort to . . . settle" grievances (Section 2 First, 45 U.S.C. § 152 First) will become meaningless.

B. This Court Has Held That Federal Courts Have a Duty to Enforce the Mandatory Provisions of the Railway Labor Act.

This Court's first case under the 1934 amendments to the Railway Labor Act, *Virginian R. Co. v. System Fed. No. 40*, 300 U. S. 515, considered the defense of the Norris-La Guardia Act. The Act commanded collective bargaining. The argument was made, as it is in this case, that Congress intended by the Norris-La Guardia Act to exclude enforcement of that duty from the jurisdiction of the courts.

However, the Government's brief *amicus curiae* in the *Virginian* case urged that (Br. 106-107)

"The Norris-La Guardia Act establishes a general rule applicable to the granting of injunctions in cases growing out of labor disputes. The amended Railway Labor Act, subsequently enacted, imposes specific statutory obligations, some of which are enforceable only by injunction. Under such circumstances, it seems clear that Congress would not have intended the operation of a statute passed to deal with a *specific* problem to be impeded by the application of an earlier law of more general application. See *Texas & New Orleans R. Co. v. Brotherhood of Railway Clerks*, 281 U. S., at 571, in which a similar argument was rejected. Cf. *Callahan v. United States*, 285 U. S. 515; *Ex parte United States*, 226 U. S. 420, 424; *Rodgers v. United States*, 185 U. S. 83, 87-89."

The Government's argument was accepted and it was held that the Act would be unenforceable unless the courts did have the power to enforce it; Mr. Justice Stone concluded for the unanimous Court that the provisions of the Railway Labor Act "render nugatory the earlier and more general provisions of the Norris-La Guardia Act" (300 U. S. at pp. 562-563).

The Court explained (at p. 545):

"Neither the purposes of the later Act, as amended, nor its provisions when read, as they must be, in the light of our decision in the *Railway Clerks* case, *supra* [281 U. S. 548], lend support to the contention that its enactments, which are mandatory in form and capable of enforcement by judicial process, were intended to be without legal sanction."

In discussing the propriety of equitable relief, the Court said (at p. 552):

"More is involved than the settlement of a private controversy without appreciable consequences to the public. The peaceable settlement of labor controver-

sies, especially where they may seriously impair the ability of an interstate rail carrier to perform its service to the public, is a matter of public concern. That is testified to by the history of the legislation now before us, the reports of committees of Congress having the proposed legislation in charge, and by our common knowledge. Courts of equity may, and frequently do, go much farther both to give and withhold relief in the furtherance of the public interest than they are accustomed to go when only private interests are involved. * * *. The fact that Congress has indicated its purpose to make negotiation obligatory is in itself a declaration of public interest and policy which should be persuasive in inducing courts to give relief. It is for similar reasons that courts, which traditionally have refused to compel performance of a contract to submit to arbitration * * *, enforce statutes commanding performance of arbitration agreements.

* * *

This conclusion followed directly from the holding under the 1926 Act in *Texas & N. O. R. Co. v. Brotherhood of Clerks*, 281 U. S. 548. There it was argued that Section 20 of the Clayton Act (a predecessor of the Norris-La Guardia Act) prevented an injunction. The Clayton Act was found to be inapplicable for other reasons, but Chief Justice Hughes, writing for a unanimous Court, also stated as to it (at p. 571):

"It may be doubted whether Section 20 can be regarded as limiting the authority of the court to restrain the violation of an explicit provision of an act of Congress, where an injunction would otherwise be the proper remedy."

Earlier in that opinion, Chief Justice Hughes had explained why this Court found that courts had a duty to enforce the provisions of this statute, even though no specific enforcement procedures had been spelled out therein. The opinion said (at p. 569):

"As the prohibition was appropriate to the aim of Congress, and is capable of enforcement, the conclusion must be that enforcement was contemplated.

"The absence of penalty is not controlling. The creation of a legal right by language suitable to that end does not require for its effectiveness the imposition of statutory penalties. Many rights are enforced for which no statutory penalties are provided. In the case of the statute in question, there is an absence of penalty, in the sense of specially prescribed punishment, with respect to the arbitral awards and the prohibition of change in conditions pending the investigation and report of an emergency board, but in each instance a legal obligation is created and the statutory requirements are susceptible of enforcement by proceedings appropriate to each. The same is true of the prohibition of interference or coercion in connection with the choice of representatives. The right is created and the remedy exists."

The draftsman of the 1934 Railway Labor Act was very familiar with this opinion (see *supra*, pp. 46-47).

Cases subsequent to these cases have followed their reasoning. In fact, speaking, *inter alia*, of the Adjustment Board provisions, the Court stated in the *Burley* case (325 U. S. 711, 721-722, note 12):

"Thus, one of the statute's primary commands, *judicially enforceable*, is found in the repeated declaration of a duty upon all parties to a dispute to negotiate for its settlement. See note 26 [referring to Section 3 First (i) and other Sections of the Railway Labor Act] * * *." [Emphasis supplied.]

The most recent discussion here on the subject of enforcing the Railway Labor Act involves the culmination of the long history of discrimination against Negroes by petitioner Brotherhood of Railroad Trainmen, and a few other unions.

Brotherhood of Railroad Trainmen v. Howard, 343 U. S. 768.⁶ In that case the Brotherhood of Railroad Trainmen by strike threats had forced the Missouri-Pacific Railroad to bar Negroes from certain duties. The court of appeals had properly remedied this situation. In this Court the Brotherhood of Railroad Trainmen particularly relied upon the Norris-La Guardia Act, because the effect of the judgment below was to enjoin a strike. This Court followed its tradition of insisting that the unions honor their duty under the Railway Labor Act to represent all members of their own organization, not just a favored few. The members of this Court did split over whether the union had the duty of representing all members of the craft regardless of their membership in the union, the majority holding that it did. But there was no split upon the continuing adherence to the Court's earlier position that "the District Court has jurisdiction and power to issue necessary injunctive orders notwithstanding the provisions of the Norris-La Guardia Act" (343 U. S. at p. 774). The district court was ordered to remedy the situation and was told to award appropriate relief, which necessarily would have the effect of the enjoining of further strike threats.

There are other similar decisions by this Court. They all are based on the reasoning that it would be senseless for Congress to require certain action in the 1934 amendments to the Railway Labor Act if Congress meant the earlier provisions of the Norris-La Guardia Act to prevent the federal courts from enforcing the mandatory provisions of the later Act.

Petitioners and their amici try to distinguish those cases

6. See also *Rolfes v. Dwellingham*, 198 F. 2d 591 (C.A. 8, 1952); *Brotherhood of R. Trainmen v. Templeton*, 181 F. 2d 527 (C.A. 8, 1950), certiorari denied, 340 U. S. 832; *Hunter v. Atchison, T. & S. F. R. Co.*, 171 F. 2d 594 (C.A. 7, 1948), certiorari denied 337 U. S. 916.

by saying that they were necessary to right discriminations by unions against Negroes (Pet. 28-30). But there is nothing in the Norris-La Guardia Act which makes an exception for a Negro. No matter what petitioners say about those cases, one who reads them cannot avoid seeing what this Court said it was doing. In each of those cases this Court felt that the Norris-La Guardia Act would prevent judicial action unless the federal courts had been authorized to enforce the Railway Labor Act. Thus, distinguish as they will such a case as *Graham v. Brotherhood of L. F. & E.*, 338 U. S. 232, petitioners cannot avoid this Court's statement (pp. 239-240):

"Nor does the Norris-La Guardia Act contain anything to suggest that it would deprive these Negro firemen of recourse to equitable relief from illegal discriminatory representation by which there would be taken from them their seniority and ultimately their jobs. Conversely there is nothing to suggest that, in enacting the subsequent Railway Labor Act provisions insuring petitioners' right to nondiscriminatory representation by their bargaining agent, Congress intended to hold out to them an illusory right for which it was denying them a remedy. If, in spite of the *Virginian*, *Steele*, and *Tunstall* cases, *supra*, there remains any illusion that under the Norris-La Guardia Act the federal courts are powerless to enforce these rights, we dispel it now. The District Court has jurisdiction to enforce by injunction petitioners' rights to nondiscriminatory representation by their statutory representative."

See also *Steele v. Louisville & N. R. Co.*, 323 U. S. 192, 207; *Tunstall v. Brotherhood of L. F. & E.*, 323 U. S. 210; *Rolfes v. Dwellingham*, 198 F. 2d 591, 594 (C. A. 8, 1952).

Disregarding the fact that the Norris-La Guardia Act "applies both to organizations of labor and organizations

of capital" (S. Rep. No. 163, 72d Cong., 1st sess., p. 19 (1932)), petitioners stress the fact that the injunctions in the *Railway Clerks* case of 1932 and the *Virginian* case of 1937 were against employers. From this they argue that the Norris-La Guardia Act meant that a union was protected from an injunction. But the courts found it necessary to enjoin unions in order to protect Negroes' rights in the later cases. The injunctions in the later cases necessarily forbade threats of strikes, because that was the weapon the unions were using to enforce their discrimination. It is impossible to see how this Court can read into the Norris-La Guardia Act an immunity for petitioners without really overruling these cases, as petitioners and their *amici* may well prefer.

Amicus Railway Labor Executives Association relies on *Brotherhood of Railroad Trainmen v. Toledo, Peoria & Western Railroad*, 321 U. S. 50. The applicability of the Norris-La Guardia Act was conceded there. ~~That case~~ involved contract demands, the "major disputes" under the Railway Labor Act. They are governed by different procedures than grievances. There the carrier refused to arbitrate before applying for an injunction. It was for this reason that the Court held that no relief should be given to the carrier.

In contrast to the present case, the union there had exhausted all that the Railway Labor Act required of it. Unlike this case, the carrier in *Toledo* was not asking the Court to enforce the Railway Labor Act, but, rather, was itself evading part of the demands of that Act. Here the carrier has done all it can under the Railway Labor Act.

The basic difference between the *Toledo* case and this is that there the plaintiff's suit was not brought to enforce the Railway Labor Act, whereas that is the very purpose of

this suit. Here the mandate of the Railway Labor Act can be enforced only by an injunction. Cf. *Steele v. Louisville & Nashville R. Co.*, 323 U.S. 192, 207.

In a case like this, the Eighth Circuit has also held that the Norris-La Guardia Act is not a bar to the entry of an injunction against calling a strike to bypass the Adjustment Board. In *Rolfes v. Dwellingham*, 198 F. 2d 591 (C.A. 8, 1952), the Trainmen struck over certain grievances of dining-car stewards they represented on the Missouri-Pacific Railroad. The railroad submitted the claim to arbitration in the face of the Trainmen's refusal to terminate the strike (at p. 592), and the ensuing award of a special Board of Adjustment caused the railroad to displace the plaintiff waiters-in-charge "under pressure" (at p. 594). The district court held that the waiters-in-charge were entitled to resort to the Adjustment Board. It enjoined the Trainmen from "in any manner" interfering with the railroad's compliance with this decree. The injunction therefore included interfering by strike, which had been resorted to earlier (see 198 F. 2d at 592). The *Rolfes* decree was issued for the same purpose as requested by the instant plaintiffs, namely, for "the purpose of affording opportunity for the administrative Board [National Railroad Adjustment Board] to function as contemplated by the [Railway Labor] Act" (198 F. 2d at p. 594). In affirming, the court of appeals discussed the Norris-La Guardia Act in language applicable here (198 F. 2d at p. 594):

"Also we consider the decisions of the Supreme Court, in *Graham v. Brotherhood of Locomotive Firemen and Enginemen*, 338 U. S. 232, 70 S. Ct. 14, 94 L. Ed. 22; *Virginian R. Co. v. System Federation*, No. 40, 300 U. S. 515, 57 S. Ct. 592, 81 L. Ed. 789; *Steele v. Louisville & Nashville R. Co.*, 323 U. S. 192, 65 S. Ct. 226, 89 L. Ed. 173; and *Tunstall v. Brotherhood of Locomotive Firemen and Engineman*, 323 U. S. 210, 65

S. Ct. 235, 89 L. Ed. 187, are equally conclusive that the Norris-La Guardia Act does not deprive the federal courts of power to issue such an injunction as had been issued here in aid of the administrative Board and to preserve the right of the [plaintiff] waiters-in-charge to resort to the administrative procedure provided by the Congress under the Railway Labor Act."

Petitioners urge affirmance because Congress did not specifically provide for injunctions against strikes over grievances (Br. 13, 14, 37, 40, 43). Yet Congress did not provide for injunctions to enforce many other provisions of the Railway Labor Act and this Court has nevertheless held that they must be enforced by the injunctive process. Although petitioners conceded below that it would be proper to enjoin strikes in violation of Sections 5 First (b) and 10 of the Railway Labor Act (Br. 13-14, 37, 40), those Sections do not provide for injunctions either. Few, if any, of the commands of the Railway Labor Act are self-executing, but that has not been held to preclude appropriate judicial relief.

Similarly, the *amicus* Brotherhood of Locomotive Engineers concedes that there may be no strikes during mediations or the emergency board processes (Br. 7). If such strikes may be enjoined despite the Norris-La Guardia Act, there is no reason why strikes over grievances should not be similarly enjoined.

Amicus Railway Labor Executives Association admits (Br. 28) that the Norris-La Guardia Act does not apply when a court is called upon "to compel compliance with positive mandates of the Railway Labor Act." If this Court agrees with respondents' contention that Section 3 First of the Railway Labor Act contains a positive mandate, then even under the *amicus* Railway Labor Executives Association's interpretation of the Norris-La Guardia Act, an injunction must issue.

C. The 1934 Amendments Specifically Repeal Earlier Inconsistent Statutes.

As Judge Brown's dissent noted in the *Central of Georgia case* (229 F. 2d at p. 908), it is really unnecessary to determine whether the Railway Labor Act *pro tanto* repealed the Norris-La Guardia Act. Instead, the problem is one of accommodating the two statutes. Therefore, up to this time we have not mentioned the last pertinent amendment added by Congress in 1934. This was Section 8 of the 1934 statute (48 Stat. 1197, 45 U. S. C. § 161). This Section states in no uncertain terms, "All Acts or parts of Acts inconsistent with the provisions of this Act are hereby repealed."

If any other authority were needed for the careful reasoning and indisputable logic of this Court in the cases discussed in the preceding section, here is such statutory authority. Congress made the Adjustment Board procedure mandatory, as shown in Part I *supra*. If doing this was inconsistent with the Norris-La Guardia Act, then Section 8 of the 1934 Act says that the Norris-La Guardia Act is repealed insofar as it is inconsistent with Congress' desire.

As held in *United States v. Hutcheson*, 312 U. S. 219, 235, an earlier statute must be read in conjunction with later statutes:

"The appropriate way to read legislation in a situation like the one before us, was indicated by Mr. Justice Holmes on circuit: 'A statute may indicate or require as its justification a change in the policy of the law, although it expresses that change only in the specific cases most likely to occur in the mind. The Legislature has the power to decide what the policy of the law shall be, and if it has intimated its will, however, indirectly, that will should be recognized and obeyed. The major

premise of the conclusion expressed in a statute, the change of policy that induces the enactment, may not be set out in terms, but it is not an adequate discharge of duty for the courts to say: We see what you are driving at, but you have not said it, and therefore we shall go on as before.' *Johnson v. United States*, 163 F. 30, 32."

This was reiterated in *Clifford F. MacEvoy Co. v. United States*, 322 U. S. 102, 107:

"However inclusive may be the general language of a statute, it will not be held to apply to a matter specifically dealt with in another part of the same enactment. . . . Specific terms prevail over the general in the same or another statute which otherwise might be controlling.' *Ginsberg & Sons v. Popkin*, 285 U. S. 204, 208."

CONCLUSION

There has been a growing tendency to strike over grievances,⁷ which is the very menace that the Adjustment Board was designed to eliminate. Unless the judgment below remains undisturbed, strikes over grievances will continue to multiply and the Adjustment Board will become a hollow shell. Respondents are not asserting that the Railway Labor Act bans strikes over the "major disputes" after the processes of the Railway Labor Act have been exhausted. But the principal purpose of amending the Railway Labor Act in 1934 was to ban strikes over grievances, the "minor disputes," by providing compulsory arbitration of grievances by the Adjustment Board. This mandatory duty to process grievances before the Adjustment Board

7. See pp. 5, 24-25 and 32 of the 16th, p. 5 of the 17th and 18th, and pp. 5, 21 and 23 of the 19th Annual Reports of the National Mediation Board for 1950, 1951, 1952 and 1953; "Railroad Labor Disputes and the National Railroad Adjustment Board," 18 Univ. of Chicago L. Rev. 303, 318 (1951).

must be enforced by the courts. The decisions under the Norris-La Guardia Act make it plain that the courts should enforce mandatory provisions of the Railway Labor Act.

The decision below should be affirmed.

Respectfully submitted,

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February 1957.

APPENDIX

Section 2 of the Railway Labor Act (45 U.S.C. 151a) provides in part:

"GENERAL PURPOSES

"(1) To avoid any interruption to commerce or to the operation of any carrier engaged therein; * * *

(4) to provide for the prompt and orderly settlement of all disputes concerning rates of pay, rules, or working conditions; (5) to provide for the prompt and orderly settlement of all disputes growing out of grievances or out of the interpretation or application of agreements covering rates of pay, rules, or working conditions."

Section 2 First of the Railway Labor Act (45 U.S.C. 152 First) provides:

"GENERAL DUTIES

"It shall be the duty of all carriers, their officers, agents, and employees to exert every reasonable effort to make and maintain agreements concerning rates of pay, rules, and working conditions, and to settle all disputes, whether arising out of the application of such agreements or otherwise, in order to avoid any interruption to commerce or to the operation of any carrier growing out of any dispute between the carrier and the employees thereof.

Section 2 Tenth of the Railway Labor Act (45 U.S.C. 152 Tenth) provides in pertinent part:

"* * * *Provided*, That nothing in this Act shall be construed to require an individual employee to render labor or service without his consent, nor shall anything in this Act be construed to make the quitting of his labor by an individual employee an illegal act; nor shall any court issue any process to compel the per-

formance by an individual employee of such labor or service, without his consent."

Section 3 First (i) of the Railway Labor Act (45 U.S.C. 153 First (i)) provides:

"The disputes between an employee or group of employees and a carrier or carriers growing out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions, including cases pending and unadjusted on the date of approval of this Act, shall be handled in the usual manner up to and including the chief operating officer of the carrier designated to handle such disputes; but, failing to reach an adjustment in this manner, the disputes may be referred by petition of the parties or by either party to the appropriate division of the Adjustment Board with a full statement of the facts and all supporting data bearing upon the disputes."

Section 3 First (k) of the Railway Labor Act (45 U.S.C. 153 First (k)) provides:

"(k) Any division of the Adjustment Board shall have authority to empower two or more of its members to conduct hearings and make findings upon disputes, when properly submitted, at any place designated by the division: *Provided, however,* That final awards as to any such dispute must be made by the entire division as hereinafter provided."

Section 3 First (w) of the Railway Labor Act (45 U.S.C. 153 First (w)) provides:

"(w) Any division of the Adjustment Board shall have authority, in its discretion, to establish regional adjustment boards to act in its place and stead for such limited period as such division may determine to be necessary. Carrier members of such regional boards shall be designated in keeping with rules de-

vised for this purpose by the carrier members of the Adjustment Board and the labor members shall be designated in keeping with rules devised for this purpose by the labor members of the Adjustment Board. Any such regional board shall, during the time for which it is appointed, have the same authority to conduct hearings, make findings upon disputes, and adopt the same procedure as the division of the Adjustment Board appointing it, and its decisions shall be enforceable to the same extent and under the same processes. A neutral person, as referee, shall be appointed for service in connection with any such regional adjustment board in the same circumstances and manner as provided in paragraph (1) hereof, with respect to a division of the Adjustment Board."

Section 3 Second of the Railway Labor Act (45 U.S.C. 153 Second) provides:

"Nothing in this section shall be construed to prevent any individual carrier, system, or group of carriers and any class or classes of its or their employees, all acting through their representatives, selected in accordance with the provisions of this Act, from mutually agreeing to the establishment of system, group, or regional boards of adjustment for the purpose of adjusting and deciding disputes of the character specified in this section. In the event that either party to such a system, group, or regional board of adjustment is dissatisfied with such arrangement, it may upon ninety days' notice to the other party elect to come under the jurisdiction of the Adjustment Board."

Section 8 of the 1934 Railway Labor Act (48 Stat. 1197, 45 U.S.C. 161) provides:

"If any section, subsection, sentence, clause or phrase of this Act is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portions of this Act. All Acts or parts of Acts inconsistent with the provisions of this Act are hereby repealed."

JAN 10 1957

JOHN T. PEY, Clerk

In the Supreme Court of the United States

OCTOBER TERM, 1956.

No. 313.

BROTHERHOOD OF RAILROAD TRAINMEN, etc., et al.,

Petitioners,

vs.

**CHICAGO RIVER AND INDIANA RAILROAD
COMPANY, et al.,**

Respondents.

**ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE SEVENTH CIRCUIT.**

**BRIEF OF BROTHERHOOD OF LOCOMOTIVE
ENGINEERS AS AMICUS CURIAE.**

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**ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE SEVENTH CIRCUIT.**

BRIEF OF BROTHERHOOD OF LOCOMOTIVE ENGINEERS AS AMICUS CURIAE.

This brief is filed on behalf of the Brotherhood of Locomotive Engineers as amicus curiae (sometimes hereinafter referred to as "Brotherhood" or "BLE"). Consent to its filing has been given by all parties to the case, and has been filed with the Clerk of the Court contemporaneously with the filing hereof. The Brotherhood is a labor organization in the railroad industry, is national in scope, and organized in accordance with the Railway Labor Act. Members of the Brotherhood are employed in locomotive engine service; and the Brotherhood, through the General Committees of Adjustment organized individually on the various carriers, is the craft representative of locomotive engineers on approximately ninety-eight per cent of the mileage of the principal railroads of the United States. As such craft representative it is vitally interested in con-

struction and interpretation of the Railway Labor Act (45 U. S. C. §§ 151 *et seq.*) by the courts and its application on the various carriers. The instant case involves the right of railroad employees to strike, which right is of greatest concern to railroad employees. This brief is filed in support of the contention that the Railway Labor Act does not prohibit strikes by railroad employees to enforce the settlement of their disputes with a carrier growing out of grievances or arising out of the interpretation and application of a collective bargaining agreement, and that such strikes are not illegal under that Act.

STATEMENT.

The pertinent facts of this case are contained in the amended complaint and answer and will be fully set forth by the parties and need not be repeated in detail herein. For the purposes of this brief it will be sufficient to state that a strike of employees on the respondent Chicago River and Indiana Railroad, who were represented by petitioner Brotherhood of Railroad Trainmen, was called because of unsettled grievances arising out of (1) claims of certain employees for additional compensation, (2) a claim for reinstatement of one employee to a higher position, and (3) a claim for reinstatement of a discharged employee. All of these grievances had been progressed through the normal handling with the carrier as required by § 3, First (i) of the Railway Labor Act (45 U. S. C. § 153, First (i)). The employees, through their representative, chose not to present these grievances to the National Railroad Adjustment Board, to which Board they could have been presented (45 U. S. C. § 153, First (i)), but called a strike to enforce them, which strike, however, was postponed by reason of the National Mediation Board having proffered

its services. Upon the release by the Mediation Board of its jurisdiction a new strike date was set (R. 6 and 7). In the amended complaint the carrier alleged that the administrative machinery of the Railway Labor Act for the settlement of the alleged grievances was compulsory (R. 5). It further alleged that the controversy between the carrier and its employees did not involve a labor dispute within the meaning of the Norris-LaGuardia Act (29 U. S. C. 101, *et seq.*) and that said Act had no application to the controversy (R. 9). The United States Court of Appeals for the Seventh Circuit held that a strike to enforce these grievances "would be illegal" and that "the Norris-LaGuardia Act does not apply to the case at bar." (R. 35, 37.) 229 F. 2d 926, 931, 932.

QUESTIONS PRESENTED.

The fundamental question in the case is whether the procedure provided in 45 U. S. C. § 153, First (i) for submitting to the National Railroad Adjustment Board disputes growing out of grievances or out of the interpretation or application of collective agreements is mandatory or compulsory so as to make illegal the right to strike to enforce settlement.

A further question is, does a federal court have jurisdiction to issue an injunction against a strike to enforce settlement of such grievances, whether such strike be legal or illegal.

STATUTES INVOLVED.

The statutes involved are: The Railway Labor Act as amended, 45 U. S. C. §§ 151 *et seq.*, and the Norris-LaGuardia Anti-Injunction Act, 29 U. S. C. §§ 101 *et seq.*, pertinent provisions of which are set forth in the appendix hereto.

SUMMARY OF ARGUMENT.

The decision of the court below in essence is one which requires compulsory arbitration of all claims growing out of grievances or interpretation or application of collective agreements between carriers and their employees. It would prohibit all strikes arising out of such matters. It is diametrically opposed to the decisions of this Court which hold, in effect, that it was not intended by the Railway Labor Act to provide compulsory arbitration of disputes but to provide a voluntary system therefor.

Moreover, until approximately the time the instant litigation was begun, it had been the understanding of all concerned with the functioning of the Railway Labor Act that the procedures were not compulsory and that strikes to force settlement of grievances were not illegal. In appearances before a committee of the United States Senate for the purposes of urging an amendment to the Railway Labor Act to outlaw strikes, spokesmen for the carriers stated, in substance, that such legislation should be adopted because the Railway Labor Act did not require that such disputes be taken to the National Railroad Adjustment Board and did not forbid strikes over disputes which could be taken to that Board. The proposed legislation did not reach the floor of Congress but the decision of the court below now finds erroneously that a strike arising from grievance disputes is made illegal by the provisions for the procedure before the National Railroad Adjustment Board.

The holding of this Court in *Slocum v. D. L. & W. R. Co.*, 339 U. S. 239, that as between courts and the Adjustment Board the Adjustment Board has exclusive primary jurisdiction of such disputes, has no application in determining whether the Adjustment Board procedure is compulsory to the exclusion of a strike to enforce settlement of grievances.

The legislative history shows that the 1934 amendment providing for the Adjustment Board did not provide for or authorize injunctions to prevent strikes to bring about settlement of such disputes. While it was the view of the sponsor that strikes ought not to be called for such purposes it was also his view that no authorization for injunctions against such strikes should be included in the amendment.

The voluntary use of procedure of the Adjustment Board is readily distinguished from the required and mandatory duties and definite prohibitions which were enforced in *Virginian R. Co. v. System Federation*, 300 U. S. 515, and *Texas & N. O. R. v. Brotherhood of Ry. & S. S. Clerks*, 281 U. S. 548, the decisions of which cases do not justify the decision below.

Since the Adjustment Board procedure is voluntary and not compulsory there is no specific requirement therein which would override the anti-injunction provisions of the Norris-LaGuardia Act, and this voluntary procedure of the Railway Labor Act does not have the effect of repealing any part of the Norris-LaGuardia Act.

In practical effect the decision of the court below, by holding illegal a strike by the employees in regard to their disputes growing out of grievances or claims, or the Board's decisions thereon, will impede rather than promote the settlement of such disputes. Such holding will withdraw from the employees the historic right to use economic sanctions in collective bargaining for settlements on the property where the great bulk of such disputes must be settled. It would place in the hands of management the free and unrestricted option to deny claims at the conference levels and to decline to place Board awards in effect, subject only to enforcement actions which are accompanied by further delays and other practical dis-

advantages to the employees. It would make the Board a substitute for rather than a supplement to the settlement effort on the individual railroads. The outcome is fraught with the consequence that the employees will be obliged to flood the Board with an additional case load which will result in a breakdown in the functioning of the Board and a destruction of its usefulness.

ARGUMENT.

I. THE RAILWAY LABOR ACT NEITHER EXPRESSLY NOR IMPLIEDLY PROHIBITS STRIKES ARISING FROM DISPUTES GROWING OUT OF GRIEVANCES OR OUT OF THE INTERPRETATION OR APPLICATION OF COLLECTIVE AGREEMENTS.

1. The decisions of this Court do not support the holding of the court below that the Railway Labor Act prohibits strikes based on grievances.

The Railway Labor Act was not intended to outlaw strikes. There is no express prohibition of strikes in any of the provisions of the Railway Labor Act. Although there is no doubt that the purposes of the Act are to provide for the settlement of disputes, including those concerned with the making of collective agreements and also the interpretation and application thereof, and to avoid interruption to commerce and to the operation of the carrier, Congress saw fit not to accomplish these purposes by expressly outlawing strikes. Rather, Congress provided new machinery which could be used in an endeavor to settle disputes. As was said by the Court of Appeals for the District of Columbia in *Washington Terminal Company v. Boswell*, 124 F. 2d 235, 247 (aff. 319 U. S. 732, by an equally divided court):

"The Railway Labor Act was designed not to outlaw the right to strike, but merely to prevent the necessity for its exercise."

The same view was expressed by this Court in *Moore v. Illinois Central R. Co.*, 312 U. S. 630, 635, where it is said:

"For neither the original 1926 Act, nor the Act as amended in 1934, indicates that the machinery provided for settling disputes was based on a philosophy of legal compulsion. On the contrary, the legislative history of the Railway Labor Act shows a consistent purpose on the part of Congress to establish and maintain a system for peaceful adjustment and mediation voluntary in its nature."

As this Court has previously indicated, notably in the case of *Elgin, Joliet & Eastern Railway Co. v. Burley*, 325 U. S. 711, 724, the types of disputes between carriers and their employees with which the Act is concerned have been divided into two classes, denominated major and minor disputes. Generally, the major disputes are those arising out of the formation or modification of collective agreements, while the so-called minor disputes are grievances arising out of the interpretation and application of agreements already entered into. In the case of major disputes, the Act provides for the machinery of mediation which may be invoked by either of the parties to the dispute or may be proffered by the National Mediation Board, 45 U. S. C. §§ 154, 155. If mediation fails, voluntary arbitration is to be urged by the Board. If arbitration is not accepted by the parties, an Emergency Board may be created by the President of the United States to investigate and report upon the dispute, 45 U. S. C. § 160. While mediation and the Emergency Board processes are functioning as provided in the Act, strikes are postponed but not prohibited. The use of these processes when they are

invoked in an effort to settle a dispute is required, but nothing in the Act concerning them in any way prohibits a strike after these processes have been completed if the dispute is not settled by their use.

With respect to the settlement of grievances, the Act expressly requires only that disputes between a carrier and its employees "shall be handled in the usual manner up to and including the chief operating officer of the carrier designated to handle such disputes," (45 U. S. C. § 153, First (i)). After the disputes have been so handled the next step mentioned in the Act is a submission of the dispute to the proper division of the National Railroad Adjustment Board, but whereas the Act requires that the disputes *shall* be handled with the proper officers of the carrier, it provides, with respect to further handling, only that "the disputes *may* be referred by petition of the parties or by either party to the appropriate division of the Adjustment Board." (45 U. S. C. § 153, First (i)). When disputes have been submitted to the Adjustment Board the awards of the Board "shall be final and binding upon both parties to the dispute except as insofar as they shall contain a money award." (45 U. S. C. § 153, First (m)).

It is submitted that the distinction made in paragraph (i) in the use of the words "shall" and "may" is a real distinction. It would have been a simple matter for Congress to have provided a mandatory requirement that if disputes were to be pressed beyond the refusal of the carrier's highest designated officer they should be taken to the Adjustment Board. If such had been the intention of the Act Congress could well have stated in subparagraph (i) that, failing to reach an adjustment with the carrier's officers "the disputes (if they are to be pressed further)

shall be referred by petition of the parties, etc." ¹ Instead, Congress said only that if adjustment failed with the carrier the disputes *may* be referred to the Board. The language chosen made available the procedure before the Adjustment Board if, as and when the procedure was voluntarily invoked. The hope may well have been that the Board procedure would always be utilized, but a strike, as an alternative, was neither expressly nor impliedly prohibited.

The case of *Slocum etc. v. D. L. and W. R. Co.*, 339 U. S. 239 (quoted by respondent in brief below), which held that claims arising out of the interpretation or application of collective agreements and involving questions of future relations between a carrier and its employees could not be submitted to the courts because the jurisdiction of the National Railroad Adjustment Board was exclusive, it is submitted, is not authority for the decision of the court below. The *Slocum* case considered only the alternatives of submission to a court and submission to an established administrative tribunal. That holding was in accord with long established and generally accepted doctrine that where there is an existing non-judicial tribunal for deciding specific controversies, whether such tribunals be statutory or be established within the framework of the organization involved, resort may not be had to courts for the adjudication of such controversies. *Gonzalez v. Roman Catholic Archbishop of Manila*, 280 U. S.

¹ In Section 10 of the Act (45 U. S. C. 160), which provides that when an Emergency Board has been appointed a threatened strike must be postponed until thirty days after that Board has made its report, there is no uncertainty concerning the requirement for such postponement. The prohibition is clear and definite that until the said thirty day period has expired "no change, except by agreement, shall be made by the parties to the controversy in the conditions out of which the dispute arose."

1; *Myers v. Bethlehem Shipbuilding Corporation*, 303 U. S. 41.

The basis of decision that courts will not hear and determine controversies where other tribunals have been established to decide them, at least until after such remedies have been exhausted, appears to be found in the expectation that if the established tribunals are used the courts in most instances will not be called upon to decide these controversies. But the rationale of decisions which require submission to the non-judicial tribunals when the alternative is submission to the courts, in order to prevent the courts being clogged with a huge multiplicity of unnecessary suits, has no application when the jurisdiction of the court is not invoked and the alternative is an employees' strike. The right of employees to organize into unions for their mutual benefit and protection and to strike has long been recognized by the courts and has been protected by statute, as for example, by certain provisions of the Clayton Act (29 U. S. C. § 52), and the Norris-La-Guardia Act (29 U. S. C. §§ 101 et seq.).

Chief Justice Taft, speaking for the court, in *American Steel Foundries v. Tri-City Central Trades Council*, 257 U. S. 184, at p. 209, said:

"Labor unions are recognized by the Clayton Act as legal when instituted for mutual help and lawfully carrying out their legitimate objects. They have long been thus recognized by the courts. They were organized out of the necessities of the situation. A single employee was helpless in dealing with an employer. He was dependent ordinarily on his daily wage for the maintenance of himself and family. If the employer refused to pay him the wages that he thought fair, he was nevertheless unable to leave the employ and to resist arbitrary and unfair treatment. Union was essential to give laborers opportunity to

deal on equality with their employer. They united to exert influence upon him and to leave him in a body, in order, by this inconvenience, to induce him to make better terms with them. They were withholding their labor of economic value to make him pay what they thought it was worth. The right to combine for such a lawful purpose has, in many years, not been denied by any court. The strike became a lawful instrument in a lawful economic struggle or competition between employer and employees as to the share or division between them of the joint product of labor and capital."

This right to strike is a long existing common law right and continues to exist in the absence of some statutory prohibition to the contrary. A statement thereof is found in the opinion of the United States Court of Appeals for the Second Circuit in *Douds v. Local 1250, etc.*, 173 F. 2d 764, at p. 770, where it is said:

"As we have already indicated, the right to bargain collectively and the right to strike and induce others to do so, are derived from the common law; it is only in so far as something in the Act (Taft-Hartley Act) forbids their exercise that their exercise becomes unlawful."

Any statutory prohibition of the right to strike would be clearly in derogation of the common law right and would require a clear and explicit statement to that effect in its enactments. Such prohibition is not to be implied from the fact of existence of a tribunal to which voluntary resort may be had. While one of the express purposes of the Railway Labor Act is to avoid interruptions to commerce (45 U. S. C. § 151a) it is a significant fact that nowhere in the Act is it stated that a strike shall be prohibited. With this purpose so well known to Congress it can hardly be claimed that it overlooked placing a pro-

hibition against strikes in the Act, if such had been its intention. So to contend would be so unreasonable as to be practically absurd. On the other hand, if Congress had intended to prohibit strikes, a single and simple phrase could have stated such intention. With the long history of refusal of our courts to curtail or prohibit the right to strike, the only proper conclusion, it is submitted, is, as indicated in *Washington Terminal Company v. Boswell, supra*, that by enactment of the Railway Labor Act there was no intention to outlaw the right to strike but merely to prevent the necessity for its exercise.

2. The practical construction which has been given to the Act shows that the 1934 amendment did not outlaw strikes over grievances.

We submit the further point, which we believe to be of highly significant pertinence, that the practical construction which has been placed upon this Act by the parties most interested, namely, the employees and the carriers, and also by the National Mediation Board which is constantly concerned with the administration of the Act, demonstrates clearly that the 1934 amendment establishing the National Railroad Adjustment Board did not prohibit, and was not intended to prohibit, strikes arising out of grievances or claims based upon the interpretation and application of collective agreements.

It is obvious, of course, that the employees have not considered that the Railway Labor Act in any of its provisions prohibited strikes. Until after the decision of this court in the *Slocum* case, *supra*, it is apparent that the carriers did not claim that there was any prohibition against strikes to be gleaned from the Act. From 1934 until 1950 there had been strikes and threatened strikes due

to grievances arising out of the interpretation and application of collective agreements in force. Perhaps the most notable of these were two strikes, involving all crafts of operating employees, which occurred in 1949, one on the Wabash Railroad and the other on the Missouri Pacific Railroad.¹ The former lasted approximately eight days and the latter forty-five days. In neither of these cases, nor, so far as we are aware, in any strike or threatened strike arising prior to the time of these strikes, had the carrier sought to have them enjoined or raised any question as to the legality of such strikes or as to prohibition thereof by the Railway Labor Act.

Probably the reason for the absence of any litigation seeking injunctions against strikes over grievances is to be found in the definite view of the carriers that there was no prohibition against such strikes to be found in the Act. While the present law with reference to the National Railroad Adjustment Board has been in effect without change since June of 1934, the contention of the carriers in the instant case that strikes arising out of disputes over claims and grievances are illegal, is of recent origin, extending back from the present only two or three years. As late as 1950 it was the legal position of the carriers that nothing in the Act prevented strikes over unsettled claims or grievances. In that year there was introduced in the United States Senate by Senator Donnell of Missouri a bill seeking to outlaw strikes on railroads. (S. 3463, 81st Cong. 2nd Sess.). Hearings were held upon this bill by a Sub-committee of the Senate Committee on Labor and Public Welfare, but the bill was never acted upon by the

¹ See Fifteenth Annual Report of National Mediation Board to Congress, pp. 3, 13, and Sixteenth Annual Report of that Board, pp. 4, 25.

Senate. However, considerable testimony was taken by the Senate Sub-committee.

A number of witnesses on behalf of the carriers either appeared in person to testify or presented statements to the Sub-committee which were read to that committee. The testimony of some of these witnesses left no doubt that in the view of the carriers the Railway Labor Act did not prohibit strikes, including strikes growing out of grievances or out of the interpretation or application of agreements. One of the witnesses for the carriers whose statement was read to the Sub-committee was Daniel P. Loomis, who was Chairman of the Association of Western Railroads, and who appeared on behalf "of the railroads members of the Association of American Railroads which comprises practically all of the Class I railroads of the United States, and somewhat in excess of 95% of the entire railroad industry." (Hearings, S. 3463, 81st Cong., 2nd Sess., p. 85). On the point of whether the 1934 amendment prohibited strikes, Mr. Loomis, in his statement to the Sub-committee, said (Hearings, p. 86):

"I should make it clear that the cases which are referable to the National Railroad Adjustment Board are not cases where either side is seeking to change an agreement or to secure different wages, rules or working conditions. These cases only involve the proper interpretation of the contracts in effect or a grievance arising under said contract. There is no excuse for a strike in any of these cases. * * * The parties can submit the question to the National Railroad Adjustment Board; they can arbitrate it under the provisions of the Railway Labor Act; they can agree to set up a special Adjustment Board on the particular property to dispose of such disputes. Surely a strike should not be called because of the failure of the parties to agree on a proper interpretation of a con-

tract when the law provides means for securing a binding interpretation.

S. 3463 would outlaw strikes in these types of cases and we are heartily in accord with the view that such strikes should be outlawed."

Mr. Loomis later appeared in person at the hearings for questioning. He testified further with reference to the absence of any compulsory requirement for use of the Adjustment Board procedure and as to the lack of any prohibition against strikes, as follows (Hearings, p. 436):

"Some carriers had attempted to secure a judicial interpretation of their contracts by bringing declaratory judgment actions, but the United States Supreme Court, in the recent decisions in *Slocum v. Delaware, Lackawanna & Western* and *Order of Railway Conductors v. Southern Railway* has held that the carrier cannot bring a declaratory judgment suit and that the National Railroad Adjustment Board has sole and exclusive jurisdiction.

"Mr. Justice Reed dealt with the evils of this result very clearly in his dissenting opinion. The result of these decisions is that the carrier can secure an interpretation of its contract only through the National Railroad Adjustment Board, but the unions do not even have to take a case to the Adjustment Board and instead are free to strike to secure the interpretation they desire regardless of what the contract itself may say.

* * *

"The present situation resulting from the Lackawanna and Southern Railway decisions is that the union may pursue any course it desired to secure an interpretation of a contract. It can submit the case to the Adjustment Board or it can threaten a strike, but the carrier is left only the remedy of submitting the case to the Adjustment Board and even if it does

so the union can still strike in an attempt to secure the interpretation it wishes." ¹

¹ See also Proceedings, 1951, Section of Labor Relations Law, American Bar Association, pp. 75-86. Mr. Loomis was a member of the Committee on Railway Labor Act which submitted a report to the Section. He was one of the majority signing the report, which contained, among other things, the following (p. 80):

"The ordinary individual grievance procedure should continue along present lines and made clearly compulsory under an amendment of the Railway Labor Act, and awards in respect to the same should be made final, binding and enforceable by appropriate court actions wherever they are not given full force and effect. In other words, an award against a railroad for remuneration of any kind should be transposable into an immediate judgment upon a showing that the procedure was regular and the arbitrational awards are in fact made. Strikes in relation to the individual grievances, or because of disappointment with respect to awards in connection with individual grievances, should be flatly prohibited and subjected to penalties and liabilities for damages and for contempt where injunctions may be violated."

In the conclusion of the report of the majority of the Committee appears the following, pp. 80, 81:

"2. Labor disputes of a minor nature involving individual grievances should continue to be subjected to essentially the present procedure but it *should be made compulsory*. The conclusions reached in such way should, after being approved in a suitable court review, be made final and binding upon all parties excepting that any disappointed grievance claimant should be entitled to quit his employment as an individual if he desires to do so." (Emphasis supplied.)

This Committee was composed of seven members, three of whom, representing the labor point of view, dissented. In the dissent appears the following, p. 82:

"An examination of the printed record of those hearings (on the Donnell bill) will show the great detail to which the subject matter was pursued, and will readily indicate the intense interest of the Senators of the Sub-Committee. During the time the hearings on the Donnell bill were in progress two railroad strikes were called. The atmosphere was ideally suited to the hopes of those who sought congressional approval of the legislation. Yet, after the complete and comprehensive hearings described above, and despite

(Continued on next page)

The late J. Carter Fort, who was then Vice President and General Counsel for the Association of American Railroads, also appeared before this Sub-committee to testify in support of the Donnell bill, and, with reference to the disputes referable to the National Railroad Adjustment Board, said in part as follows. (Hearings, p. 13):

"As to disputes concerning the interpretation of agreements, the present law does afford an opportunity for employees to obtain final and enforceable decisions through the machinery of the National Railroad Adjustment Board set up under the provisions of the amendments of 1934. However, the law does not require that employees take such disputes to the Adjustment Board or abide by the decisions of the Board. And it does not forbid strikes in connection with disputes falling within the jurisdiction of the Adjustment Board, and there have been many strikes of that kind."

It therefore appears that the question of the legality of a strike arising out of grievance claims was first raised after the decision of this Court in the *Slocum* case, and indeed not until two or three years after that decision, when it was sought to translate an effect of the holding of the court with reference to the exclusive jurisdiction of the National Railroad Adjustment Board into a holding as made by the court below, the effect of which would be to outlaw strikes arising out of grievances. As we have

(Continued from preceding page)

the background of railroad work stoppages, only one vote in the Senate Committee on Labor and Public Welfare, that of Sen. Donnell, was cast to report the bill favorably."

The report of the ABA Committee on Railway Labor Act indicates no disagreement on the part of the members of the Committee that the present Railway Labor Act does not prohibit strikes for the enforcement of disputes arising out of grievances.

demonstrated above, we submit that the contention of the carriers and the holding of the court below that the 1934 amendment of the Act giving jurisdiction of the National Railroad Adjustment Board to decide grievance claims submitted to it thereby abolished the right to strike over grievances, constitute an unwarranted effort to stretch the *Slocum* decision beyond all reasonable bounds.

A view similar to that of the A. A. R. witnesses, as to the effect of the Act apparently was taken by the American Short Line Railroad Association. In its "Agenda for Forty-Second Annual Meeting" held October 11-12, 1955, appears the following, on pp. 84-86:

"* * * The following Legislative policies are offered for consideration by the membership.

The Association Favors

* * *

F-7. Amendment of Railway Labor Act in the following particulars:

(f) To provide that the present jurisdiction of the Board be made mandatory and exclusive as to all parties.

(g) To prohibit strikes and lockouts as to all disputes subject to the Board's jurisdiction, with appropriate penalties for violations."

The practical construction placed upon the Act in this respect by the National Mediation Board is significant.

In Section 5, First, of the Railway Labor Act (45 U. S. C. § 155, First) it is provided that:

"The Mediation Board may proffer its services in case any labor emergency is found by it to exist at any time."

In carrying out its functions under this particular authorization the Board has from time to time made proffer of

its services when a strike or strikes appeared likely and when its services had not been invoked by parties to the dispute. In its Twentieth Annual Report to Congress for the fiscal year ending June 30, 1954, p. 3, in the section of the Report headed "Strikes and Threatened Strikes," appears the following:

"The Board for many years has consistently held to its policy of declining to accept for mediation disputes which, under Section 3 of the Act, are properly referable to the National Railroad Adjustment Board. * * * There have, however, been occasions where it has been necessary for the Board to proffer its mediation services in situations which threatened to result in a labor emergency, without regard to the causes. When occasions of this nature arise in connection with strike threats which involve dockets of time claims and grievances, it is the earnest endeavor of the Board to persuade the parties to submit such dockets to determination by the creation of a system adjustment board for that particular dispute."

In the same section of the Report, p. 6, appears the following significant statement:

"While there is no prohibition in the Act against the exercise of economic force by either party to a dispute, and there can be none under our free institutions, extended work stoppages invariably result in material losses for all parties concerned. Greater use of the principles of arbitration, which also includes the procedure of special adjustment boards, will minimize such loss to employees and employers, as well as the attendant inconvenience to the public affected by strike actions. * * * The fullest use of the procedures contained in the Railroad Labor Act is again commended to both sides in labor disputes as the best means available to prevent such controversies from reaching the final stage of direct action."

With the foregoing practical constructions of the Act by all parties concerned therewith, and in view particularly of the permissive language of § 3, First (i) of the Act, we submit that the construction of this provision placed upon it by the court below is wholly unwarranted.

II. THE LEGISLATIVE HISTORY OF THE 1934 AMENDMENTS TO THE RAILWAY LABOR ACT SHOWS THAT THE PROVISIONS FOR THE ESTABLISHMENT OF THE NATIONAL RAILROAD ADJUSTMENT BOARD WITH JURISDICTION TO DECIDE DISPUTES GROWING OUT OF GRIEVANCES OR THE INTERPRETATION OR APPLICATION OF COLLECTIVE AGREEMENTS DID NOT PROHIBIT, AND WERE NOT INTENDED TO PROHIBIT, STRIKES WITH RESPECT TO SUCH DISPUTES.

The most important of the 1934 amendments to the Railway Labor Act was one which created the National Railroad Adjustment Board (45 U. S. C. § 153). The original Act of 1926 had provided for the establishment of regional or system boards by the voluntary agreement of the parties involved. These boards were to be composed of an equal number of representatives from the two sides, and no provision was made for a decision in the event of deadlock. Only a few of such boards had been established and they had proven to be unsatisfactory and little had been accomplished.

The principal sponsor of the 1934 amendments of the Railway Labor Act was Interstate Commerce Commissioner Joseph B. Eastman, who at the time was also Federal Co-ordinator of Transportation. His testimony was given at length before the committees of both the Senate and the House of Representatives. In the hearings before the Senate Committee on Interstate Commerce (73rd

Cong., 2d Sess., Hearings on S. 3266, a Bill to Amend the Railway Labor Act, etc.) Commissioner Eastman said, as reported at p. 17 of the hearings:

"Another difficulty with the present law, even where an Adjustment Board has been established, is that, although its decisions are final and binding upon both parties, there can be no certainty that there will be a decision. The two sides are now evenly represented on these Boards, and hence deadlocks are a very distinct possibility. Not only are they possible but they have occurred in a large number of cases, and of late there has been a continually growing tendency toward such deadlocks. The number now existing runs into the hundreds. Because of the lack of Adjustment Boards in many situations and the tendency of those which do exist to deadlock, very disturbing conditions have at times been created, especially in recent months.

The bill before you, S. 3266, attempts to remedy both of these deficiencies in the present law. It provides for the creation of a National Adjustment Board to which unadjusted 'disputes between an employee or group of employees and a carrier or carriers growing out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules or working conditions' *may be referred*. (Emphasis supplied.)

The National Adjustment Board is to handle only the minor cases growing out of grievances or out of the interpretation or application of agreements. Provision is also made so that deadlocks will be impossible. When the regular members, who will be equally divided between the two sides, disagree, they must call in a neutral member appointed by the Mediation Board to decide the case. * * * They can agree upon the neutral member, but if they do not agree he has to be appointed by the Mediation Board.

The willingness of the employees to agree to such a provision is, in my judgment, a very important concession and one of which full advantage should be taken in the public interest. I regard it as, perhaps, the most important part of the bill."

In the hearings before the Senate Committee there apparently was no discussion or question raised as to whether the proposed establishment of a National Adjustment Board would have any effect on the right of employees to strike after an unfavorable decision of the Board or if they did not wish to submit their grievances to the Board. However, in the hearings before the House Committee on Interstate and Foreign Commerce on H. R. 7650 (73rd Cong., 2d Sess.), a substantially identical bill which had been introduced in the House, there was some discussion and questioning as to the effect of the provisions for the National Adjustment Board upon the right of the employees to strike with respect to grievances and claims. Commissioner Eastman made substantially the same general statement with respect to the purpose of the establishment of the National Adjustment Board as had been made in the earlier hearings before the Senate Committee. He said (p. 47):

"Provision is also made so that deadlocks will be impossible. * * *

Now it seemed to be very generally agreed in the hearings before the Senate Committee that there ought to be a mandatory provision for the creation of these Boards of Adjustment, and also it seemed to be agreed that the provision for appointing a neutral member in case of a deadlock was an excellent provision and ought to be in the law. The difference of opinion which developed before the Senate Committee was whether these Boards should be national in scope or regional."

At p. 61:

"Mr. Wolverton. Does this Act in any way, Mr. Eastman, provide that it will be a violation of law if they do not comply with the decree and the order that is made?

Commissioner Eastman. It says that the award shall be final and binding.

Mr. Wolverton. Does this bill attempt in any way to enforce that provision; and if so, is it contrary to public policy to put such a provision in the bill?

Commissioner Eastman. Page 19, line 19, it says:

'The district courts are empowered, under the rules of the court governing actions at law, to make such order and enter such judgment, by writ of mandamus or otherwise, as may be appropriate to enforce or set aside the order of the division of the Adjustment Board.'

Mr. Wolverton. Is there any provision in this bill that would enable the court to obtain an injunction against a labor organization which is dissatisfied with the final decree and refuses to comply with it?

Commissioner Eastman. Well, I am not able to give you an answer to that. That is a legal question, to be frank with you, that I have not gone into.

Mr. Wolverton. It would seem to me that the provisions or language of the bill itself would answer that question. And is it contrary to public policy to have such a provision in there?

Commissioner Eastman. Well, it is my own opinion that there ought not to be strikes with reference to minor grievances of that sort. I should be very unwilling to take away from the employees the right to strike on major issues, but these are not major issues.

Mr. Wolverton. The provision which I read a few moments ago protects the individual employee so that no court can order him to work, and no court can issue an injunction preventing him from striking nor in any

way prevent the free exercise of his own individual discretion as to whether he shall work or not work.

Is there any language that is equally clear with respect to the organizations? I understood you are not certain that the language would apply to any other than an individual.

Commissioner Eastman. Well, I think that the carrier can enforce the order. For instance, if the order provides that certain working rules shall be interpreted in the same way, the carrier, of course, can apply the rule in that way.

Now, the only question I am in doubt about is whether or not there should be an injunction under this Act to prevent a strike. Now, I am not clear about that.

Mr. Wolverton. Do you think that there should be such a provision in the bill?

Commissioner Eastman. I would rather see it carried out without that, because I do not believe you are going to have that question arise.

Mr. Wolverton. Do you consider it better policy to leave it out—

Commissioner Eastman. Well, no particular question has been raised about this matter of enforcement.

p. 62:

Mr. Wolverton. *Let us first have a frank understanding as to whether it is included or is not included in the bill and then we can determine the policy as to whether it should be or should not be in the bill; but it certainly seems to me that the bill ought not to be left indefinite either from the standpoint of the carriers or the standpoint of the employees. We should know just what the situation is."*

There then followed a discussion between Mr. Wolverton and Mr. Eastman's legal adviser, Mr. Carmalt, wherein Mr. Carmalt stated, among other things, that the question had not arisen before, and that he was "more or less think-

ing out loud." The discussion of the point was then continued by Mr. Eastman.

P. 64:

"Commissioner Eastman. I may say, so far as I am concerned, it had not seemed to me that matter was a contingency of importance, because I cannot conceive of organizations striking over the settlement of grievances, particularly when they had been passed upon by an impartial tribunal under Government auspices.

P. 65:

It is a serious enough thing to strike when a major matter is involved; but when you have only minor grievances and they have had full opportunity to be heard and have had their day in court before a tribunal, it hardly seemed to me that that was a question that was likely to arise. *My own idea would be, let that question arise out of experience and find out whether there is actual need for any such power before you provide for issuing injunctions for preventing strikes.*

Mr. Wolverton. Mr. Commissioner, that may be true. Maybe that is a proper course to pursue, but what I am seeking to find out is whether this language declares something else to be the policy.

Commissioner Eastman. Yes.

Mr. Wolverton. And, I am endeavoring to find out just what policy we are adopting. It may be that a hands-off policy is what we should adopt, but in that case, I do not want to see something in the bill that carries a different effect. That is the purpose of my questions, in trying to find out definitely what is the purpose or effect of the provisions in this bill.

Commissioner Eastman. I shall be glad to give the matter study and let you know just what my opinion is upon it." (Emphasis supplied.)

So far as we have been able to determine, no further report was made to the committee by Mr. Eastman.

A consideration of the statements of Commissioner Eastman with respect to whether or not a strike would be illegal and subject to injunction can lead to no other conclusion than that there was no prohibition in the amendments against the strike called to enforce settlement of grievances. He was not at any time willing to express the view that the Adjustment Board procedure did prohibit, or was intended to prohibit, strikes for such purpose. True, he expressed the view that he did not think the organization would strike over the settlement of grievances, but he did not advocate including authority to issue injunctions. By quoting three statements from the above, we summarize what we believe were his conclusions as to such authority being found in the amendments:

Page 61 of the report where he said:

"Now, the only question I am in doubt about is whether or not there should be an injunction under this Act to prevent a strike. Now I am not clear about that. * * *"

Again, on the same page:

"I would rather see it carried out without that because I do not believe you are going to have that question rise."

And at p. 65:

"My own idea would be, let that question arise out of experience and find out whether there is actual need for any such power before you provide for issuing injunctions for preventing strikes."

Congressman Wolverton's comments quoted above showed a definite understanding on his part that the proposed amendments did not specifically cover the point of whether strikes over grievances would be illegal.

With reference to Commissioner Eastman's statement quoted above that he could not conceive of organizations striking over settlement of grievances, we think an observation concerning the importance of settlement of grievances is proper. These grievances were referred to as minor disputes, but apparently what was not given consideration was that accumulations of minor disputes could readily become major disputes, and such was the case in the Wabash and Missouri Pacific strikes hereinabove mentioned, and such is the case with reference to the threatened strike in the instant suit.¹

George M. Harrison, appearing as spokesman for the Standard Railway Organizations before the House Committee, reviewed at some length the dissatisfaction which the employees had with reference to the settlement of claims and grievances, and referred to the unsatisfactory method of adjustment of grievances under the Adjustment Board procedure of the 1926 Act. He then said (p. 81):

¹ In case No. 56, October Term 1956, before this court, *Pennsylvania Railroad Company, et al. v. Rychlik, et al.*, a brief, at the invitation of the court, was filed by the Solicitor General. In Appendix A to that brief is set forth a letter dated September 19, 1956 from the Chairman of the National Mediation Board to the Solicitor General. In that letter appears the following:

"It is axiomatic to say that the prompt settlement of grievances is necessary to preserve good relations between the carriers and their employees. The failure to settle such may lead, and has led, to disturbances interfering with the transportation system of the country. Unfortunately, through the past twenty years, there has slowly been built up on the First Division of the National Railroad Adjustment Board a large backlog of cases. For several years this backlog has been in the neighborhood of approximately 3,000 cases, which represents a minimum of five years backlog based on the Board's normal productivity.

Because of this backlog on the First Division, organizations have been reluctant to take their cases to the Division and have sought a solution to the settlement of the grievance disputes by incorporating them into strike dockets."

"So out of all of that experience, and recognizing the character of the service given to the people of this country by our industry and how essential it is to the welfare of the country, these organizations have come to the conclusion that in respect to these minor grievance cases that grow out of the interpretation and/or application of the contracts already made, that they can very well permit those disputes to be decided, if they desire to progress them, to be decided by an Adjustment Board. When that decision is made the law will provide that it shall be final and binding on the parties and enforceable in the courts. * * *"

At page 35 of the hearings before the Senate Committee, Mr. Harrison said:

"It is a very troublesome problem and I just want to make this observation. These railway labor organizations have always opposed compulsory determination of their controversies. We have lived a long time and have got a lot of experience, and we know that these minor cases that develop out of contracts that we make freely, and which we have the right and privilege of entering into and have something to say about their terms, we are now ready to concede that we can risk having our grievances go to a Board and get them determined, and that is a contribution that these organizations are willing to make."

We do not find anything in Mr. Harrison's statements to the Committee which indicates that strikes to enforce grievances or claims would be prohibited. What the organizations were willing to do, as appears from his testimony, was to set up a Board which, if the grievances were progressed to it, would have a right to make a final decision. A decision would be final and binding only after a grievance had been voluntarily submitted to the Board for decision. This was the concession which he said the employees were making. The departure in the amendment which constituted a concession on the part of the

employees was a willingness to have a final decision by a neutral on disputes voluntarily submitted to the Board in the event that a decision could not be reached by the equal representation of both carriers and employees.

Mr. Harrison also appeared in opposition to the Donnell bill before the Sub-committee conducting the hearings on that bill (S. 3463, 81st Cong., 2nd Sess.). On the point here under consideration, namely, whether the Adjustment Board provisions of the Railway Labor Act were intended to outlaw strikes, the following statements of Mr. Harrison with respect to the Donnell bill are pertinent as showing that Mr. Harrison did not intend in 1934 to convey the impression that he thought strikes were prohibited by the Adjustment Board provisions. At the hearing before the Sub-committee on the Donnell bill, p. 205, Mr. Harrison said, in part:

"You see, under the present law, if we have a complaint against a railroad company that one of our contracts has been violated, that we cannot settle after a conference with railway management, *we may, at our own election, take that dispute to the Railroad Adjustment Board for decision, or we may strike if we want to under the present law*, but we have gone, as the record shows, to the Adjustment Board, went through all the delay and all the hearing and all the expense to get a decision. Now we get the decision in favor of the applicants, or plaintiffs, the Union, and the railroad says, 'pooh-pooh, we won't put it into effect. If you want to get that out of us go to court and sue us' (under the enforcement provision of the Railway Labor Act). Well, we don't want to sue, because we tried the case once, according to the agreed upon procedure, so we threaten to strike, against an arbitrary refusal, to put into effect the decision; after they had their day in court. Now they want in this bill proposed by you, to have the right to go into court and get a review of every decision that is handed down

by the Adjustment Board. Well, where would we ever get anything settled? That is nonsense, you can't handle labor relations like that." (Emphasis supplied)

The Reports of the House and Senate Committees on the pending legislation did not suggest that the proposed Adjustment Board provisions would be compulsory or that a strike called to enforce settlements of grievance claims would be illegal or subject to injunction. The report of the House Committee was made on H. R. 9681, which was one of two similar bills which had been introduced in the House, the other being H. R. 7650. We are certain there is no contention that the 1926 Act contained any anti-strike provisions. The report of the House contained the following statement:

"The bill does not introduce any new principles into the existing Railway Labor Act, but it is designed to amend that Act in order to correct the defects which have become evident as the result of eight years of experience." (House Report No. 1944, on H. R. 9681, 73rd Cong., 2nd Sess., p. 2.)

* * * * *

"The second major purpose of the bill is to provide sufficient and effective means for the settlement of minor disputes known as 'grievances,' which developed from the interpretation and/or application of the contracts between the labor union and the carriers fixing wages and working conditions. * * *

"Many thousands of these disputes have been considered by boards established under the Railway Labor Act; but the boards have been unable to reach a majority decision, and so the proceedings have been deadlocked. These unadjusted disputes have become so numerous that on several occasions the employees have resorted to the issuance of strike ballots and threatened to interrupt interstate commerce in order to secure a postponement. * * * This condition should be corrected in the interest of industrial peace and

uninterrupted transportation service. This bill, therefore, provides for the establishment of a national Board of Adjustment to which these disputes *may* be submitted if they shall not have been adjusted in conference between the parties." (Emphasis supplied.) (House Report No. 1944, pp. 2 and 3.)

Again, we submit, that the use of the word "may" in the House Committee report is of real significance. Having just referred in the report to the fact that many strikes had been called because of grievances not adjusted under the existing Act, the Committee used the permissive "may" with respect to the use of the Adjustment Board machinery. Had the Committee intended to convey the impression to the House that the Adjustment Board procedure was compulsory and that a strike called for the purpose of enforcing settlement of grievances without making use of that procedure would be illegal it could have done so at that point. But obviously such a requirement of the Act would have introduced a new principle of compulsion and anti-strike into the Act which would have been contrary to the statement that the amendments introduced no new principles into the Act.

III. THE NORRIS-LA GUARDIA ACT PROHIBITS THE ISSUANCE OF AN INJUNCTION IN THIS CASE.

The Norris-LaGuardia Act, 29 U. S. C. 101 *et seq.*, was enacted to deny jurisdiction to federal courts to issue injunctions in labor disputes. The court below held that that Act did not apply to the instant case. Its decision on that point arises from its holdings in the same case that the Railway Labor Act provides for compulsory adjustment of grievances through the machinery of the National Railroad Adjustment Board; that the Act provides a complete plan for avoiding interruptions to commerce through

the medium of compulsory adjustment of grievances; and that to apply the provisions of the Norris-LaGuardia Act to the instant case would render nugatory the compulsory adjustment of grievances under the Railway Labor Act. Based thereon, the court below held that the Railway Labor Act operated to repeal the provisions of the Norris-LaGuardia Act and that it was authorized to issue an injunction to prevent the strike arising out of the grievance disputes.

A strikingly similar situation was presented to the Court of Appeals for the Fifth Circuit in the case of *Brotherhood of Railroad Trainmen, et al. v. Central of Georgia R. Co.*, 229 F. 2d 901, in which a conclusion was reached directly opposite to that of the Court of Appeals in the instant case. The Court of Appeals for the Fifth Circuit held that the Norris-LaGuardia Act deprived federal courts of jurisdiction to issue injunctions against strikes and that the court had no jurisdiction to order an injunction, whether the purpose of the strike was or was not illegal. It held that the decisive and fundamental questions were whether there was a labor dispute and an injunction was sought in such a dispute. Since that case did involve a labor dispute the court held that the Norris-LaGuardia Act denied jurisdiction to issue an injunction. This case has been accepted for review by this Court, and is No. 84, October Term, 1956.

The court below for its holding on the question of authority to issue the injunction, relied largely upon two previous decisions of this court involving enforcement of provisions of the Railway Labor Act, to wit, *Texas & N. O. R. Co. v. Brotherhood of Ry. & S. S. Clerks*, 281 U. S. 548, and *Virginian Ry. Co. v. System Federation, etc.*, 300 U. S. 515. It quoted from the T. & N. O. case as follows:

"The creation of a legal right by language suitable to that end does not require for its effectiveness the imposition of statutory penalties. Many rights are enforced for which no statutory penalties are provided. * * * The right is created and the remedy exists."

From the *Virginian Railway* case is quoted:

"Neither the purposes of the later Act, as amended, nor its provisions when read, as they must be, in the light of our decision in the *Railway Clerks* case, supra (281 U. S. 548) lend support to the contention that its enactments, which are mandatory in form and capable of enforcement by judicial process, were entitled to be without legal sanction."

At the time of the decision in the *T. & N. O.* case (1930) the *Norris-LaGuardia* Act (1932) had not been enacted. However, the injunction in that case was based upon the provision then and now found in § 2, Third, of the *Railway Labor Act*, 45 U. S. C. § 152, Third, which gave the employees as well as the carrier the positive right to designate representatives "without interference, influence or coercion" by the other party, and upon the direct prohibition that "neither party shall in any way interfere with, influence or coerce the other in its choice of representatives." In that connection Mr. Chief Justice Hughes, speaking for the court, said, p. 567:

"It is at once to be observed that Congress was not content with the general declaration of the duty of carriers and employees to make every reasonable effort to enter into and maintain agreements concerning rates of pay, rules and working conditions, and to settle disputes with all expedition in conference between authorized representatives, but added this distinct prohibition against coercive measures. * * * While an affirmative declaration of duty contained in a legislative enactment may be of imperfect obligation because not enforceable in terms, a definite statutory

prohibition of conduct which would thwart the declared purpose of the legislation cannot be disregarded."

Similarly, in the *Virginian Railway* case, the court was enforcing a positive duty of the carrier, namely, "the command of the statute to negotiate for the settlement of labor disputes," p. 559, (45 U. S. C. § 152, First, Second).

The language of the involved sections of the statute is in § 152, First, that:

"It shall be the duty of all carriers * * * and employees to exert every reasonable effort to make and maintain agreements, etc."

and in § 152, Second:

"All disputes between a carrier or carriers and its or their employees shall be considered and if possible decided with all expedition in conference between representatives, etc."

It is thus clear that in these cases both the duty and the prohibition were clearly expressed and "mandatory in form." These cases therefore are to be distinguished from the instant case where, as heretofore discussed, there is no mandatory requirement that grievances shall be submitted to the Adjustment Board but only a provision that they may be submitted. The holding of this court, therefore, in the *Virginian Railway* case, that a specific obligation mandatory in form is not within the limitations of the Norris-LaGuardia Act, has no application to the language of § 153, First (i). Since the invocation of the services of the National Railroad Adjustment Board is permissive only and not required, it cannot be claimed that provisions of the Railway Labor Act "mandatory in form" would be thwarted by a declination to invoke the service of this Board, and in, the alternative, resort to a strike. To hold, as did the court below, that the threatened

strike was illegal because it construed that the permissive language of the Act made resort to the Board compulsory, is to disregard or ignore the definite construction of this court of the adjustment functions provided in the Act as expressed in *Moore v. I. C. R. Co. supra*, that "the Railway Labor Act shows a consistent purpose on the part of Congress to establish and maintain a system for peaceful adjustment and mediation voluntary in its nature."

IV. THE EFFECT OF THE DECISION OF THE COURT BELOW WILL BE TO IMPEDE RATHER THAN PROMOTE THE SETTLEMENT OF GRIEVANCES, CONTRARY TO THE PURPOSES OF THE ACT.

At the outset of this brief we expressed the conviction that the instant case is of greatest concern to railroad employees. It is our belief that the effect of an interpretation that § 3, First (i), provides for compulsory arbitration of employee grievances by the National Railroad Adjustment Board will be to impede rather than promote the settlement of such disputes. The permissive nature of resort to the Board appearing from the express provisions of the section has practical advantages in making such settlements which compulsory arbitration would destroy. Included among such advantages is the paramount necessity of encouraging, not minimizing, the settlement of such disputes by collective bargaining.¹

¹ Commissioner Eastman, at the hearings on the 1934 amendments, referred to the necessity of the organizations and the railroads "settling all disputes if they can at home" to prevent flooding the Adjustment Board with cases (Hearings before House Committee on H. R. 7650, 73rd Cong., 2nd Sess., p. 48).

In the amici brief of the Brotherhood of Locomotive Engineers and the Brotherhood of Railroad Trainmen filed upon reargument of the Elgin, Joliet & Eastern Railway Company case, No. 160, October Term 1944, an indication was given of the

It must be borne in mind that the initiative in submitting and progressing their grievances and claims is always upon the employees. At the management level it is always within the power of management to deny such grievances or claims. Under the decision below this option of management, as we shall shortly point out, is fraught with most serious consequences in its application to "on the property" settlements. It also has practical consequences in the enforcement of Board awards.

(Continued from preceding page)

volume of such grievance disputes by reference to the annual statistics of the Brotherhood of Railroad Trainmen, and the following statement was made:

"For the year ending June 30, 1944, the Adjustment Board reported that the B. of R. T. filed 979 bases before Division 1. The Report of the president of the B. of R. T. for the year 1944 discloses that during this year the organization's vice presidents and deputy presidents, in assisting B. R. T. general committees, handled 3951 grievance cases with railroad managements. The claims in such cases were disposed of as follows: allowed or compromised 2416; withdrawn 541; referred to National Railroad Adjustment Board 113; to be handled further on the property 881. These statistics show that the 113 cases thus referred to the Adjustment Board are less than 3 per cent of the total handled by the grand officers. If this ratio be applied to the 979 B. R. T. cases filed with the Board during the year ending June 30, 1944—which include the number filed without grand officer assistance—it would appear that the Brotherhood's general committees handled some 38,000 grievances on the properties in one year for this single organization. The figure reaches its true significance when the volume of grievances dealt with at local levels is considered. General committees prosecute only the unadjusted grievances referred to and accepted by them when local committee action fails. It is estimated that no more than 5 to 10 per cent of the grievances handled by local committees ever reach the general committees. While these estimates are not precise, enough has been said to indicate the great magnitude of such grievances."

Copies of the aforementioned report were furnished to the court and counsel, and it was stated that the report is on file in the Library of Congress.

The burden on the employees to progress and the power of management to deny do not in practical effect really shift when resort to the Board is had. For even if the employee wins his case and receives an affirmative award, the carrier is free—absent the deterrent of the possible use of economic strength by the union—to disregard the award and order, subject only to the statutory enforcement suit which must be brought by the claimant pursuant to § 3, First (p). Thus it would be within the power of the carrier, by refusing to comply, to force every employee to bring an enforcement suit. In such a contest the employees are unequal to management in financial, legal and other resources, despite the “advantages” given to them by the provisions of sub-paragraph (p).

The practical problems presented by this situation were exposed in the testimony of George M. Harrison in the hearings on the Donnell bill.

Mr. Harrison submitted data (Hearings, *supra*, p. 177) indicating that the Board, in the first six years of its experience, found in cases submitted to it, that the carriers had violated the employees' agreements 10,998 times. He then went on to say:

“For the most part the carriers have applied the awards rendered by the Board, although their failure to do so has resulted in some litigation and caused some strikes. I know of no cases where the employees have not accepted adverse awards of the Board. The carriers' witnesses complained bitterly about these few strikes because the act provides a method of enforcing decisions of the Board through an action in the courts. It must be apparent to anyone familiar with labor-management relations that if the carriers ever force the common use of court procedure in the enforcement of awards of the Adjustment Board, the employees will be compelled to return to the use of

economic strength in contract violations in the first instance and refrain from handling cases with the Board. The provisions of this bill providing for a court review of the awards of the Board will completely destroy the effectiveness of the Board and place in the hands of the carriers a weapon with which they will be able to delay the settlement of all disputes, involving the interpretation or application of agreements, with the result that many strikes will inevitably follow."

We concede that, for the most part, as Mr. Harrison put it, the carriers have complied with the awards rendered against them by the Board. But the record of such compliance has been made against the historical background, until the decision below, that the employees were legally free to use economic strength against an obdurate management. If the ability to strike is taken away there is no assurance that the present degree of compliance with awards will continue.

As suggested above, the weapon of compulsory arbitration which the decision below makes available to the railroads will, in a still more important way, impede the settlement of such disputes. It will place in the hands of management the unrestrained ability to deny claims at the carrier level which are now subject to bona fide bargaining between parties who are relatively equally matched as negotiators—the carrier with its prerogative of denying claims and the employers with their option to resort to the Board but equipped with the alternative of using economic sanctions if needed.

For example, in the case of time claims—which cost the railroads money when allowed—the invitation to deny such claims, often as a matter of routine, will be particularly attractive. For by so doing managements can ulti-

mately force the employees, under the decision below, to bear the heavy burden and disastrous consequences, hereinafter noted, of taking all such claims to the Adjustment Board. A construction of the Act which would allow this to happen would, we submit, frustrate the provisions of the Act which contemplate as the first step the handling of such disputes in the "usual manner" in conferences between the parties, thus looking to settlement by collective bargaining (§§ 2, Second; 3, First (i)). Once a carrier determines upon a policy of denying such grievances and claims in "on the property" negotiations, if the next step is compulsory, the employees would have no alternative but to resort to the Board. In the absence of any right to collectively bargain for the adjustment of such claims the employees will be helpless and at the mercy of an obstinate carrier.

In this connection attention may be profitably directed to certain trends in the experience with grievance adjustment which, we believe, may become unfortunate realities if the use of the Board machinery is held to be compulsory.

These trends are noticed in certain of the findings of Mr. E. J. Connors, Vice President of the Union Pacific Railroad, who was appointed by President Roosevelt in 1945 and was continued in his assignment by President Truman, to report on the conditions on the First Division of the Board which gave concern. Mr. Connors' report, as released by the National Mediation Board January 21, 1947, stated:

"The First Division has been the subject of conferences between representatives of the railroads and the Brotherhoods, and numerous investigations over practically the entire period of its existence. Review

of the investigations indicates an atmosphere of more heat than light. In the conferences argument concerning procedural changes and the precedent principle obscured the fact that the *Division had become a substitute for, rather than a supplement to, the settlement effort on the individual railroads.*" (Emphasis supplied).

Mr. Connors continued, p. 7:

"There has been a gradual substitution of adjustment machinery for the conference method of settlement. The existence of the Board has steadily tended to defeat the efforts, both of the employee representatives and management, to settle grievances locally and engendered hundreds of appeals on unimportant and trivial controversies formerly disposed of in conference.

"Awards indicate attempts by railroads to use the Division as a medium of relief from rules or agreed-to practices of their own making, to repudiate previous settlements, or seek reversal of prior decisions."

and at p. 8:

"An adjustment board has a proper place as a supplement to this effort (prompt disposition of disputes and exertion of every reasonable effort to settle disputes in conference), but its use as a buck-passing institution destroys the conference method of settlement upon which the favorable railroad-labor relations structure has been built."

Under the interpretation made by the court below, the net and perhaps the most important aspect of this problem is the danger that the employees will be forced to flood the Board with a still greater volume of cases than is now stagnating its processes. Bearing in mind, as pointed out in the letter dated September 19, 1956 from the Chairman of the National Mediation Board to the Solicitor General

set forth at p. 27, *supra*, that the backlog of the Board for several years has been in the neighborhood of approximately 3,000 cases, which represents a minimum of five years backlog based on the Board's normal productivity, such additional volume of cases would surely bring about a complete breakdown of the Adjustment Board machinery.

In summary of this point, as this Court is aware from its consideration of the *Washington Terminal Company* and *Elgin, Joliet & Eastern Railroad Company* cases, *supra*, the magnitude and importance of settling grievance disputes is not only very great, but the position of the contending parties over the years, and until the decision of the court below in the instant case, has been in relative balance, due in large part to the fact that the employees were able to strike when necessary. The interpretation of § 3, First (i) as requiring compulsory resort to the Board in the event settlements are not negotiated in prior handling on the property and the employees desire further to progress their grievances, would overturn that balance and turn the machinery afforded by the Adjustment Board into an instrument which could destroy the ability of the employees effectively to prosecute such grievances whether on the property or before the Board. To outlaw the right to strike rather than to merely prevent the necessity for its exercise, and to impose compulsory arbitration of such disputes, would, we submit, be a revolutionary and unwarranted construction, not consistent with either the language or purposes of the Act, framed as it is to provide for permissive resort to the Adjustment Board.

CONCLUSION.

The decision of the Court of Appeals for the Seventh Circuit should be reversed and the injunction heretofore granted by the District Court should be dissolved.

Respectfully submitted,

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APPENDIX.

Pertinent Provisions of Railway Labor Act

45 U. S. C. §§ 151 ff.

Sec. 151a. General Purposes.

"The purposes of the chapter are: (1) To avoid any interruption to commerce or to the operation of any carrier engaged therein; (2) to forbid any limitation upon freedom of association among employees or any denial, as a condition of employment or otherwise, of the right of employees to join a labor organization; (3) to provide for the complete independence of carriers and of employees in the matter of self-organization to carry out the purposes of this chapter; (4) to provide for the prompt and orderly settlement of all disputes concerning rates of pay, rules, or working conditions; (5) to provide for the prompt and orderly settlement of all disputes growing out of grievances or out of the interpretation or application of agreements covering rates of pay, rules, or working conditions.

"Sec. 153. First. There is established a Board, to be known as the 'National Railroad Adjustment Board,' the members of which shall be selected within thirty days after June 21, 1934, and it is provided—

"(a) That the said Adjustment Board shall consist of thirty-six members, eighteen of whom shall be selected by the carriers and eighteen by such labor organizations of the employees, national in scope, as have been or may be organized in accordance with the provisions of section 152 of this title.

"(i) The disputes between an employee or group of employees and a carrier or carriers growing out of grievances or out of the interpretation or application of agreements concerning rates of pay; rules, or working conditions, including cases pending and unadjusted on June 21, 1934, shall be handled in the usual manner up to and including the chief operating officer of the carrier designated to handle such disputes; but, failing to reach an adjustment in this manner, the disputes may be referred by

petition of the parties or by either party to the appropriate division of the Adjustment Board with a full statement of the facts and all supporting data bearing upon the disputes.

"(m) The awards of the several divisions of the Adjustment Board shall be stated in writing. A copy of the awards shall be furnished to the respective parties to the controversy, and the awards shall be final and binding upon both parties to the dispute, except insofar as they shall contain a money award. In case a dispute arises involving an interpretation of the award, the division of the Board upon request of either party shall interpret the award in the light of the dispute.

"Sec. 155. First. The parties, or either party, to a dispute between an employee or group of employees and a carrier may invoke the services of the Mediation Board in any of the following cases:

"(a) A dispute concerning changes in rates of pay, rules, or working conditions not adjusted by the parties in conference.

"(b) Any other dispute not referable to the National Railroad Adjustment Board and not adjusted in conference between the parties or where conferences are refused.

"The Mediation Board may proffer its services in case any labor emergency is found by it to exist at any time."

Pertinent Provisions of the Norris-LaGuardia Act 29 U. S. C. §§ 101 ff.

"Sec. 101. No court of the United States, as defined in this chapter, shall have jurisdiction to issue any restraining order or temporary or permanent injunction in a case involving or growing out of a labor dispute, except in a strict conformity with the provisions of this chapter; nor shall any such restraining order or temporary or permanent injunction be issued contrary to the public policy declared in this chapter:

"Sec. 104. No court of the United States shall have jurisdiction to issue any restraining order or temporary or permanent injunction in any case involving or growing out of any labor dispute to prohibit any person or persons participating or interested in such dispute (as these terms are herein defined) from doing, whether singly or in concert, any of the following acts:

"(a) Ceasing or refusing to perform any work or to remain in any relation of employment.

"Sec. 107. No court of the United States shall have jurisdiction to issue a temporary or permanent injunction in any case involving or growing out of a labor dispute, as defined in this chapter, except after hearing the testimony of witnesses in open court (with opportunity for cross-examination) in support of the allegations of a complaint made under oath, and testimony in opposition thereto, if offered, and except after findings of fact by the court, to the effect—

"(a) That unlawful acts have been threatened and will be committed unless restrained or have been committed and will be continued unless restrained, but no injunction or temporary restraining order shall be issued on account of any threat or unlawful act excepting against the person or persons, association, or organization making the threat or committing the unlawful act or actually authorizing or ratifying the same after actual knowledge thereof;

"(b) That substantial and irreparable injury to complainant's property will follow;

"(c) That as to each item of relief granted greater injury will be inflicted upon complainant by the denial of relief than will be inflicted upon defendants by the granting of relief;

"(d) That complainant has no adequate remedy at law; and

"(e) That the public officers charged with the duty to protect complainant's property are unable or unwilling to furnish adequate protection."

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Supreme Court of the United States

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ET AL.,**

Petitioners,

VS.

**CHICAGO RIVER AND INDIANA RAILROAD
COMPANY, ET AL.,**

Respondents.

**On Writ of Certiorari to the United States Court of
Appeals for the Seventh Circuit**

**BRIEF OF THE RAILWAY LABOR EXECUTIVES'
ASSOCIATION AS AMICUS CURIAE**

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**Dated at Toledo, Ohio, this
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**BRIEF OF THE RAILWAY LABOR EXECUTIVES'
ASSOCIATION AS AMICUS CURIAE**

**Preliminary Statement — Interest of
the Amicus Curiae.**

This case squarely presents two questions of vital importance to the rights of employees in the railroad industry under the Railway Labor Act and the Norris-LaGuardia Act. The decision of the court below, if permitted to stand, would destroy their basic right to strike in perhaps the broadest field of management-labor relations, and would implement that destruction by returning railroad labor disputes to the Federal courts for disposition by injunctive decree.

Specifically, the Court of Appeals below held that the

creation of the National Railroad Adjustment Board by the 1934 amendments to the Railway Labor Act had the two-fold effect of outlawing strikes over the broad range of contract claims and grievances which the Board was given authority to decide, and of repealing the Norris-LaGuardia Act *pro tanto*, so as to give the Federal courts jurisdiction to enjoin such strikes.

The Railway Labor Executives' Association, on whose behalf this brief as *amicus curiae* is presented, is a voluntary unincorporated association, with which are affiliated the following standard international railway labor organizations:

- American Railway Supervisors' Association
- American Train Dispatchers' Association
- Brotherhood of Locomotive Firemen and Enginemen
- Brotherhood of Maintenance of Way Employes
- Brotherhood of Railroad Signalmen of America
- Brotherhood of Railroad Trainmen
- Brotherhood Railway Carmen of America
- Brotherhood of Railway and Steamship Clerks,
Freight Handlers, Express and Station Employees
- Brotherhood of Sleeping Car Porters
- Hotel & Restaurant Employees and Bartenders
- International Union
- International Association of Machinists
- International Brotherhood of Boilermakers, Iron Ship
Builders, Blacksmiths, Forgers and Helpers
- International Brotherhood of Electrical Workers
- International Brotherhood of Firemen & Oilers,
Helpers, Roundhouse & Railway Shop Laborers
- International Organization Masters, Mates & Pilots
of America
- National Marine Engineers' Beneficial Association
- Order of Railway Conductors and Brakemen
- Railroad Yardmasters of America
- Railway Employees' Department, AFL-CIO
- Sheet Metal Workers' International Association
- Switchmen's Union of North America
- The Order of Railroad Telegraphers

The principal office of said Association is located at 401 Third Street, N.W., Washington 1, D.C.

The foregoing organizations affiliated with the Railway Labor Executives' Association represent, for purposes of collective bargaining under the Railway Labor Act, more than one million railroad employees. Each of said affiliated organization is a party to collective bargaining agreements between it and nearly every railroad in the United States, governing the rates of pay, rules and working conditions of said employees. Said organizations are under a statutory duty to exert every reasonable effort to make and maintain such agreements and to settle all disputes with respect to their interpretation or application.

The holding of the court below adopts a philosophy of compulsion and litigation which not only would be crippling in its effect upon the ability of these organizations effectively to fulfill their representative function, but would be entirely foreign to the principles which have motivated Congressional action in the labor relations field, and which have been recognized in previous decisions of this Court.

It is our position that the court below erred both in holding that the Railway Labor Act outlawed strikes of the type in question, and in sustaining the jurisdiction of the District Court to grant injunctive relief against such a strike.

Summary of Argument

Stated in summary form, the propositions which will be supported in our argument are as follows:

I. The Railway Labor Act was not intended to outlaw strikes in support of employee grievances or claims based on asserted violations of their contractual employ-

ment rights. When it amended the Act in 1934 to create the National Railroad Adjustment Board, a specialized administrative tribunal for the handling of such disputes, Congress did not make resort to such tribunal compulsory. The availability of the administrative remedy was calculated to minimize strikes over such disputes but not prohibit them. The Congressional approach to government regulation of labor relations has been characterized by a reluctance to resort to compulsion, and a continued reliance upon voluntary processes looking to settlement rather than adjudication of disputes.

The common law right to strike over such disputes was well recognized. Neither the language nor the legislative history of the Railway Labor Act, and particularly the 1934 amendments thereto, support the conclusion that, by implication only, a prohibition against strikes is to be found in the creation of the National Railroad Adjustment Board.

The absence of such a prohibition in the Railway Labor Act was recognized by spokesmen for the railroads, and legislation supplying it was unsuccessfully urged in connection with a proposed amendment to the Act known as the Donnell Bill, placed before the Senate in 1950. It was not until after this failure to obtain legislative prohibition of such strikes that the courts were asked to outlaw them.

II. Irrespective of any question of its legality under the Railway Labor Act, the District Court was deprived of jurisdiction to enjoin the strike in question by the provisions of the Norris-LaGuardia Act. The Norris-LaGuardia Act is applicable to the railroad industry. The dispute which gave rise to this case was clearly a labor dispute. The Norris-LaGuardia Act flatly prohibits Federal court injunctions against strikes irrespective of any question of their legality. In the absence of some affirmative mandate in subsequent legislation, the Norris-LaGuardia Act may

not be said to have been repealed by inference or implication.

ARGUMENT

I. STRIKES OVER DISPUTES REFERABLE TO THE NATIONAL RAILROAD ADJUSTMENT BOARD ARE NOT UNLAWFUL BY VIRTUE OF THE RAILWAY LABOR ACT OR OTHER PRINCIPLE OF LAW.

In upholding the District Court's right to enjoin a strike over disputes which admittedly could have been submitted to the National Railroad Adjustment Board, the court below reasoned that when Congress amended the Railway Labor Act (45 U.S.C., Sec. 151 et seq.) in 1934 so as to make that tribunal available to either party wishing to submit the dispute for decision, and provided a means for enforcement of the Board's decisions, it thereby outlawed strikes in regard to such disputes. (R. 35.) In the following discussion we will demonstrate the unsoundness of that proposition by showing that prior to enactment of the statute in question the legality of such strikes was clearly recognized; that neither the statute nor its legislative history show any intention by Congress to outlaw strikes of this type; and that subsequent to the Railway Labor Act's adoption, the Congressional understanding that such strikes had not been outlawed was clearly demonstrated by the hearings upon, and rejection of, proposed legislation seeking amendment of the Act for the purpose of making such strikes unlawful.

The Common Law

A clear statement of the common-law rule on the right of laborers to strike is found in 31 American Jurisprudence, Labor, Sec. 192:

“Generally. — It is the settled general American

rule, effected largely without the intervention of legislation, that workmen who are not bound by contract for a definite period, and have not by agreement, freely made, given up such rights, may, without liability, abandon their employment at any time, either singly or in a body, as a means of compelling or attempting to compel their employers to accede to demands for better terms and conditions. Under the rule, laborers who have a just or fancied grievance as to hours of work, wages, etc., about which there is a dispute with their employer, may strike to coerce compliance with their demands. Some courts even hold that they may strike irrespective of whether they have cause for quitting. It is not material that laborers quit their employment by a preconcerted arrangement, that the strike is ordered and carried on by the action and through the instrumentality of a labor union, or that it is known at the time that the act of quitting employment will be attended with injury and damage to the business of the employer. Nor is a strike for betterment of wages or living conditions or for other proper object rendered unlawful by the fact that the indirect purpose of closing a business is thereby accomplished."

The late Chief Justice Taft recognized the common-law right to strike and in *American Steel Foundries v. Tri-City Central Trades Council*, 257 U.S. 184 (1921), speaking for a majority of the Court, said:

"A single employee was helpless in dealing with an employer. He was dependent ordinarily on his daily wage for the maintenance of himself and family. If the employer refused to pay him the wages that he thought fair, he was nevertheless unable to leave the employ and to resist arbitrary and unfair treatment. Union was essential to give laborers opportunity to deal on equality with their employer. They united to exert influence upon him and to leave him in a body, in order by this inconvenience to induce him to make better terms with them. They were withholding their labor of economic value to make him pay what they thought it was worth. The right to combine for such

a lawful purpose has, in many years, not been denied by any court."

More recently in a case involving a strike over grievances of individual employees the legality at common law of such a strike was reaffirmed. Judge Learned Hand in *Doubs v. Local 1250 et al.*, 173 F2d 764 (1949), who wrote the opinion for a unanimous court, said:

Page 770. "As we have already indicated, the right to bargain collectively and the right to strike and induce others to do so, are derived from the common-law; it is only in so far as something in the [Taft-Hartley] Act forbids their exercise that their exercise becomes unlawful."

These authorities clearly demonstrate that a strike to compel adjustment of grievances was not only not forbidden at common law but, to the contrary, was a classic example of legal concerted activity. Therefore, it is apparent that no illegality attaches to strikes of railroad employees in support of their grievances or contract claims unless it may be found in the federal statutes governing their employment.

The Railway Labor Act

The modern history of governmental regulation of railroad labor relations begins with the Transportation Act of 1920 (41 Stat. 469) which was enacted at the conclusion or termination of federal control of the railroads in 1920. Congress in enacting this Act intended to encourage carriers and their employees to settle by peaceful means disputes which might result in interruptions to commerce. The Transportation Act of 1920, however, did not alter the legal rights or duties of the parties who were left free to comply with the intent of Congress or to ignore it. *Pennsylvania Railroad Co. v. U.S. Railway Labor Board*, 261 U.S. 72; *Pennsylvania System, etc. v. Pennsylvania Railroad Co.*,

267 U.S. 203. It cannot be contended that this Act deprived employees of their pre-existing common-law right to strike to compel a carrier to adjust or settle grievances.

The Transportation Act of 1920 was superseded some six years later by the Railway Labor Act of 1926 (44 Stat. 577). This Act, just as the predecessor one, was based on a theory of voluntary action of the parties and cooperation in order to avoid interruptions to commerce. The 1926 Act, however, obviously did not deprive employees of the right to strike, for it did not even compel carriers to recognize and bargain on any matters whatsoever with the representatives selected by a majority of the employees in a craft or class. *Texas & New Orleans Railroad Company v. Brotherhood of Railway Clerks*, 281 U.S. 548; *Malone v. Gardner*, 62 F2d 15. During the tenure of the 1926 Act, the employees could enforce any demands concerning wages, hours of service, conditions of work, or grievances only by peaceful persuasion, which was by and large ineffectual, or by coercion through the marshalling of economic strength.¹

In 1934 Congress amended the Railway Labor Act and for the first time required, as a legal rather than a moral obligation, employees and carriers through their respective representatives to confer and bargain with one another on all disputes in an effort "to avoid any interruption to commerce or to the operation of any carrier engaged therein." 45 U.S.C. § 151. In order thus to "avoid . . . interruptions to commerce" certain preliminary steps were legally prescribed for both parties to a dispute, and if the same were taken, it was felt that accord would most likely be reached

¹In jurisdictions which had upheld the right to sue on collective bargaining agreements, claims based on well-defined agreement requirements might be enforceable through the additional remedy of court action at law for breach of contract. The deficiencies of such a method of policing collective bargaining agreements are obvious. Equitable remedies were usually unobtainable because of such doctrines as "mutuality of remedy" and the rule against specific enforcement of employment contracts.

and strikes averted. *Virginian Railway Company v. System Federation No. 40*, 300 U.S. 515. Thus, the 1934 Act in reference to the making or formation of collective agreements required the respective parties to meet, treat, and bargain in good faith in an effort to reach mutually satisfactory terms, 45 U.S.C. § 152 sixth, ninth; *Virginian Railway Company v. System Federation No. 40*, *supra*; *Brotherhood of Railway and Steamship Clerks v. Atlantic Coast Line R.R.*, 201 F. 2d 36 (C.A. 4th 1953). With respect to disputes arising out of grievances, the Act required that they be handled "in the usual manner" on the property of the carrier, but also empowered either party, at his or its election, to submit such disputes as were not settled on the property to the National Railroad Adjustment Board, an expert administrative tribunal whose decisions on disputes submitted were, except insofar as they contained money awards, to be "final and binding." 45 U.S.C. § 153, First (m); cf. *Slocum v. Delaware, L. & W. R. Co.*, 339 U.S. 239. In the event a carrier failed or refused to abide by a decision or award of the National Railroad Adjustment Board the Act provided that "the petitioner or any person for whose benefit such order was made, may file" a statutory enforcement suit in the United States District Court for the district "in which he resides or in which is located the principal office of the carrier, or through which the carrier operates. . . ." 45 U.S.C., § 153, First (p); emphasis supplied.

By requiring the representatives of the employees and the carrier to bargain with each other over the matters in dispute, both as to making or formation of collective agreements and as to grievances of individual employees, Congress made amicable adjustment of those matters much more likely. Specifically, with reference to grievances, the creation of the National Railroad Adjustment Board and its accessibility to either party to the dispute made it probable that such disputes would be referred to it. Decision

upon the merits of the grievance by this tribunal encouraged the parties to accept its determination as final, and in the case of a carrier, it was even further encouraged to give effect to an adverse award, because if it failed to do so, it was faced with the prospect of a statutory enforcement suit in which the said award could be enforced through the order of the United States Courts.

However, the Railway Labor Act did not impose upon employees or their representatives a duty to place their grievances before the Adjustment Board; it merely permitted them, if they so desired, to seek to enforce their claims by that method. No section, phrase, or word in that Act expressly or by implication purported to take away from the employees their pre-existing, common-law right to compel the carrier ultimately to settle grievances by resort to the traditional economic weapons of labor, including the strike.

This Court has recognized that the Railway Labor Act is not an all-inclusive piece of legislation controlling every aspect of employer-employee relations in the railroad field. It is, rather, the most recent in a succession of extremely cautious Congressional attempts to regulate some of those aspects, in order insofar as possible to promote industrial peace and thus avoid, not prohibit, interruptions to commerce. If Congress had intended to go so far as to actually prohibit strikes over grievances, then a clear expression of this purpose, akin to the strike prohibition sections of Section 8(b) (4) of the Taft-Hartley Act, would have been included in the Act. No expression of such intent, however, appears, and prohibitions and restraints are not to be read into the Act by implication. As stated by the Court in *General Committee, B.L.E. v. Missouri-K.T.-R. Co.*, 320 U.S. 324:

"... The new administrative machinery plus the statutory commands and prohibitions marked a great

advance in *supplementing* negotiation and self-help with specific legal sanctions in enforcement of the Congressional policy.

"But it is apparent on the face of the Act that while Congress dealt with this subject comprehensively, it left the solution of only some of those problems to the courts or to administrative agencies. It entrusted large segments of this field to the voluntary processes of conciliation, mediation, and arbitration. Thus by § 5, 45 USCA § 155, 10A FCA title 45, § 155 First, Congress provided that either party to a dispute might invoke the services of the Mediation Board in a 'dispute concerning changes in rates of pay, rules, or working conditions not adjusted by the parties in conference' and any other 'dispute not referable' to the Adjustment Board and 'not adjusted in conference between the parties or where conferences are refused.' Beyond the mediation machinery furnished by the Board lies arbitration, § 5, First and Third, § 7, 45 USCA § 157, 10A FCA title 45 § 157. In case both fail there is the Emergency Board which may be established by the President under § 10, 45 USCA § 160, 10A FCA title 45, § 160. In short, Congress by this legislation has freely employed the traditional instruments of mediation, conciliation and arbitration. Those instruments, *in addition to the available economic weapons*, remain unchanged in large areas of this railway labor field. On only certain phases of this controversial subject has Congress utilized administrative or judicial machinery and invoked the compulsion of the law. Congress was dealing with a subject highly charged with emotion. Its approach has not only been slow; it has been piecemeal. Congress has been highly selective in its use of legal machinery. The delicacy of these problems has made it hesitant to go too fast or too far. *The inference is strong that Congress intended to go no further in its use of the processes of adjudication and litigation than the express provisions of the Act indicate.* (Emphasis supplied.)

Similarly, in *Brotherhood of R.T. v. Toledo, Peoria & W. R.*, 321 U.S. 50, the Court observed that:

"The policy of the Railway Labor Act was to encourage use of the non-judicial processes of negotiation, mediation and arbitration for the adjustment of labor disputes." (321 U.S. p. 58.)

Finally, of particular relevance here, since it involved an "Adjustment Board" type of dispute, is the following statement by the Court in *Moore v. Illinois Central R. Co.*, 312 U.S. 630, 635-636:

"... neither the original 1926 Act, nor the Act as amended in 1934, indicates that the machinery provided for settling disputes was based on a philosophy of legal compulsion. On the contrary, the legislative history of the Railway Labor Act shows a consistent purpose on the part of Congress to establish and maintain a system for peaceful adjustment and mediation voluntary in its nature."

Legislative History

In addition to the railroad labor enactments reviewed above, the legislative background of the Railway Labor Act, and particularly of the 1934 amendments thereto, completely fails to support the contention that a prohibition against strikes over grievances and other so-called "minor disputes" is to be implied from the creation of the National Railroad Adjustment Board.

The Senate Committee testimony relied upon by the court below (R. 34) is but an isolated portion of considerable discussion that was had on the subject. It is of course true that by extraction of portions of the testimony relating to the effect of the new legislation upon strikes, it might be made to appear that Congress felt it was taking some action which would outlaw strikes in certain circumstances. However, there are two vital facts in connection with the legislative history which clearly refute any such conclusion:

(1) Substantially all of the testimony related only to the possibility of strikes called to resist an unfavorable or adverse award of the Adjustment Board, and the concern of the members of Congress as to whether, *in establishing the right to bring a court action, under Section 3 First (p) of the new Act, to enforce the Board's award*, Congress might be inadvertently making available to carriers injunctions against strikes;² and

(2) The whole matter was left with the recommendation of the chief witness, Mr. Joseph B. Eastman, Federal Coordinator of Transportation, that no provision for issuing injunctions for preventing strikes should be incorporated in the statute until experience had demonstrated whether any actual need for such power existed. Thus Commissioner Eastman said:

“My own idea would be, let that question arise out of experience and find out whether there is actual need for issuing injunctions for preventing strikes.” (Hearings on H.R. 7650, 73rd Congress, 2nd Session, p. 64.)

It is clear, in the light of these two salient facts, that not only did Congress fail to consider any action to prohibit strikes such as the one enjoined below (i.e., where the employees seek to enforce grievances and contract claims by economic strength and bargaining power *in lieu* of resort to the Adjustment Board procedure); it did consider, and *still* failed to deal with, the possibility of strikes *after* resort to the Board, and, in effect, “against” the Board’s awards. Instead of attempting to *prohibit* such strikes, it was content to provide machinery calculated to make them less likely to occur.

Additional references to the legislative history of the 1934 amendments to the Act, demonstrating the absence of

²See hearings on H.R. 7650, 73rd Congress, 2nd Session, pp. 60-64.

any Congressional intent to outlaw strikes over matters referable to the Adjustment Board, appear at pages 18-19 of the Petition for Certiorari herein, and these portions of the testimony at the Congressional hearings will undoubtedly be supplemented at length in the briefs of the parties on the merits. We shall accordingly refrain from additional quotation of the testimony here.

Suffice it to say that the legislative history of the 1934 amendments demonstrates a reluctance on the part of Congress to outlaw strikes which is entirely comprehensible in the light of the history of bitter strife that has attended the resort to injunctive process for the settlement of labor disputes in this country. Such history makes it equally inconceivable that Congress could have intended to take away the right to strike by mere implication, without any statement to that effect in the course of its deliberations, and without clear and obvious language in the legislation itself.

Subsequent Congressional Rejection of Respondents' Contentions — The Donnell Bill

As we have noted, there is nothing in the language of the Railway Labor Act or its legislative history which lends credence to respondents' contentions, and the conclusion of the court below, that a strike would be illegal upon the facts in this case. We concluded therefore that employees in the railroad industry have not been deprived of their common law right to strike over disputes of the sort here involved.

Subsequent legislative developments clearly demonstrate the correctness of our position. On April 21, 1950, United States Senator Donnell introduced on the floor of the Senate S. 3463 entitled "A Bill to amend the Railway Labor Act, as amended, so as to *prevent* interference with the movement of interstate commerce, and for other purposes." (Emphasis supplied.) Section 10A of this abortive enactment was as follows:

"Sec. 10A. First. Any strike, including any concerted stoppage of work by employees or any concerted slow-down, sit-down, walk-out, or other concerted interruption of operations by employees, or any lock-out by a carrier, arising out of or in connection with any dispute falling within the purview of this Act, shall be unlawful.

"Second. It shall be unlawful for any person, including a carrier or labor organization, (1) to coerce, instigate, induce, or conspire with, any other such person to interfere by any such unlawful strike or lock-out with the operation of any carrier subject to this Act; or (2) to participate in, or to aid any such strike interfering with the operation of any such carrier, or to give direction or guidance in the conduct thereof or to further the same by the payment of strike, unemployment, or other benefits to those participating therein; or (3) to aid in any such lock-out interfering with the operation of any such carrier by giving direction or guidance to such lock-out or providing funds for the conduct or direction thereof."

Violation of Section 10A was made a misdemeanor for which criminal sanctions were imposed, Section 10A Third; and the United States District Courts were given jurisdiction to issue injunctions upon the application of the Attorney General of the United States or of any state to prevent violations or threatened violations of the Act, Section 10A Fourth.

The above quoted language would have made a strike such as that here involved illegal and subject to criminal and injunctive sanctions had it become a part of the law. This Bill was reported out unfavorably by the Senate Committee on Labor and Public Welfare and never even reached the floor of the Senate. Senate Report No. 2445, Calendar No. 2449, V Sen. Rep. 81st Cong. 2d Sess. Rep. 2445; 96 Cong. Rec. 2d Sess. Part II, page 14657; 96 Cong. Rec. 2d Sess. Part 12, page 16603. Congress when squarely pre-

sented with a bill that unquestionably would have deprived railroad employees of their common-law right to strike rejected it. A clearer expression of intent on the part of Congress to preserve to railroad employees this ancient right of self-help could not be found.

Some of the testimony received by the subcommittee of the Senate Committee on Labor and Public Welfare in the course of its hearings on the Donnell Bill is extremely enlightening. Mr. George Harrison, Grand President of the Brotherhood of Railway and Steamship Clerks, speaking on behalf of 21 standard railway labor organizations affiliated with the Railway Labor Executives' Association stated:

"For the most part the carriers have applied the awards rendered by the Board, although their failure to do so has resulted in some litigation and caused some strikes. I know of no cases where the employees have not accepted adverse awards of the Board. The carriers' witnesses complained bitterly about these few strikes because the act provides a method of enforcing decisions of the Board through an action in the courts. It must be apparent to anyone familiar with labor-management relations that if the carriers ever force the common use of court procedure in the enforcement of awards of the Adjustment Board, the employees will be compelled to return to the use of economic strength in contract violations in the first instance and refrain from handling cases with the Board. The provisions of this bill providing for a court review of the awards of the Board will completely destroy the effectiveness of the Board and place in the hands of the carriers a weapon with which they will be able to delay the settlement of all disputes, involving the interpretation or application of agreements, with the result that many strikes will inevitably follow.

"The secret of industrial peace in cases involving this type of dispute is the promptness with which the claims are handled. When they cannot be disposed of

with reasonable dispatch, the atmosphere becomes charged with emotion, and as the cases accumulate, the pressure increases until an explosion in the form of a strike will certainly follow." (Hearings before the Subcommittee on Railway Labor Act Amendments to the Committee on Labor and Public Welfare United States Senate, Eighty-first Congress, Second Session on S.3463, p. 177.)

....

"MR. HARRISON. What I mean is this: If the carriers do not depart from the use of court procedure to determine grievances and to bring about compliance with Adjustment Board decisions, then we are heading for trouble and we cannot use the Adjustment Board machinery that is in the law. In your bill, Senator, you propose that every decision rendered by the Adjustment Board would be subject to review by a court. If the railroad, or the losing party, wanted to take it to court and get a review for either side, we say that is bad, that is unworkable, it creates and invites delay, it invites litigation, it creates an expense that would just be impossible for the employees to live with.

"SENATOR DONNELL. You think, therefore, that would result in strikes because of the delay to which you refer?

"MR. HARRISON. Now why do I reason it out that way? You see, *under the present law, if we have a complaint against a railroad company that one of our contracts has been violated, that we cannot settle after a conference with railway management, we may, at our own election, take that dispute to the Railroad Adjustment Board for decision, or we may strike if we want to under the present law.* But we have gone, as the record shows, to the Adjustment Board, went through all the delay and all the hearing and all of the expense to get a decision. Now we get the decision in favor of the applicants, or plaintiffs, the union, and the railroad says, 'Pooh, pooh, we won't put it into effect. If you want to get that out of us, go to court and sue us.' Well we don't want to sue, because we

tried the case once, according to the agreed-opinion procedure, so we threatened to strike, against an arbitrary refusal, to put into effect the decision, after they had their day in court, now they want in this bill proposed by you, to have the right to go into court and get a review of every decision that is handed down by the Adjustment Board. Well, where would we ever get anything settled? That is nonsense, you can't handle labor relations like that." (Id., p. 205; emphasis supplied.)

Mr. Daniel P. Loomis, chairman of the Association of Western Railroads, similarly recognized that under the Railway Labor Act of 1934, as amended, employees had the right to strike over grievances which could have been submitted to the Adjustment Board. He said:

"I should make it clear that the cases which are referable to the National Railroad Adjustment Board are not cases where either side is seeking to change an agreement or to secure different wages, rules, or working conditions. These cases only involve the proper interpretation of the contracts in effect or a grievance arising under such contract.

"There is no excuse for a strike in any of these cases. Where the parties disagree as to the proper interpretation of a contract, several methods are open to have that proper interpretation determined. The parties can submit the question to the National Railroad Adjustment Board; they can arbitrate it under the provisions of the Railway Labor Act; they can agree to set up a special adjustment board on the particular property to dispose of such disputes. Surely a strike should not be called because of the failure of the parties to agree on a proper interpretation of a contract when the law provides means for securing a binding interpretation.

"S. 3463 would outlaw strikes in these types of cases and we are heartily in accord with the view that

such strikes *should* be outlawed." (Id. p. 86; emphasis supplied.)

"SENATOR DONNELL. Do you know of any instance in which the railroads have failed to abide by a finding of the Adjustment Board?

"MR. LOOMIS. By a finding of the Adjustment Board? I can't call to mind any, in detail, but I believe there probably are, because the Adjustment Board procedure is this, that if a railroad does not comply with an order of the Adjustment Board, then the party in whose favor the award was made may sue in the courts to enforce the order. I think there have been cases where a railroad has not complied with an award of the Adjustment Board and the employee or the brotherhood has brought suit in the courts. That has been true particularly among the non-operating crafts, who are not, I think I should say, quite so apt to resort to threats of economic force as in the case of the operating crafts. In the case of the operating crafts their attitude is generally one that they will not sue to enforce an award. There is no practical right of court review. Their position is simply 'pay the award or we strike.' " (Id., p. 163.)

Mr. C. A. Miller, Vice President and General Counsel for the American Short Line Railroad Association, conceded that employees under the Railway Labor Act have retained their common-law right to strike over grievances. He said:

"Currently, as I have indicated, most of the disputes, especially with the operating railway labor organizations, grow out of grievances. *If the unions are deprived of their right to strike*, and compelled to submit their grievances to the National Railroad Adjustment Board, which was established for that purpose, there will certainly be more 'peace on the rails.' " (Id., p. 69; emphasis supplied.)

The following colloquy was exchanged between the chairman of the Subcommittee, Senator Elbert D. Thomas of Utah, and Mr. P. J. Neff, president of the Corporate Companies and chief executive officer for the trustee of the Missouri-Pacific Railroad Co., Gulf Coast Lines, and International-Great Northern Railroad Co., all of which were in bankruptcy under Section 77. Mr. Neff at this point is testifying about a strike of the employees of the Missouri-Pacific Railroad to compel the adjustment of certain grievances:

"In 1926 the railroads and their employees seeking a peaceable way to settle disputes of this character, requested Congress to provide methods for settlement and Congress did this with the support of all parties in the passage of the Railway Labor Act. Time developed that the machinery set up under the act moved slowly and at the employees' request in 1934 the Railroad Adjustment Board was created. So long as decisions favored employees their cases went to this Board and machinery in the act makes it possible to enforce an award favorable to the employees. But when awards have been unfavorable to employees there has been more and more resistance to their acceptance and more and more use of the strike threat or actual strike. So in my opinion the Railway Labor Act needs to be strengthened in the public interest.

"If time permitted, I would like to tell your committee some of the ridiculous claims which were presented to the carrier in this strike, but I am sure that the experience of all of us has been that in all situations of this kind there is much to be said on both sides. Suffice it to say that for 45 days after the strike began, representatives of the employees and railroad management struggled over the disposition of the cases involved and with the pressure which was on everybody there were, of course, some minor settlements made—and Mr. Senators, I would like to say that some of the gentlemen in this room were part of that conference and they did struggle manfully; we

struggled manfully, all of us, to try and adjust our differences, but nevertheless the strike had to go on because we couldn't compose our differences rapidly enough—but, in the end, the employees agreed to arbitrate the majority of their claims which is just what they could have done back in 1948, and the arbitration board finally agreed upon with minor exceptions sustained the position of the railroad.

“THE CHAIRMAN. May I break in there, Mr. Neff?

“MR. NEFF. Yes, sir.

“THE CHAIRMAN. In all these things you are saying you are describing a situation in collective bargaining and an attempt at mediation. Now as is reflected by this bill, say, there was no right to strike any place, do you think that these deliberations would have been cut down if there had been no right to strike?

“MR. NEFF. Well, Senator, I think if there had been no right to strike that the matter would have been composed. First, a great many of the cases which should have been sent to the Railroad Adjustment Board would have been sent there, and probably disposed of 2 years, or 3 or 4 years, earlier than they were by the decision of that Board. And as for those cases which were not referable under the Railway Labor Act to the Adjustment Board there would have been mediation or, if necessary, a Presidential fact-finding board to decide the issue. So it would not have been necessary to have a strike.” (Id., pp. 78-79.)

Mr. J. Carter Fort, Vice President and General Counsel of Association of American Railroads, speaking for his organization, which includes in its membership companies operating more than 95 percent of the class I railroad mileage in the United States and having more than 95 per cent of the class I railroad revenues, stated:

"As to disputes concerning the interpretation of agreements, the present law does afford an opportunity for employees to obtain final and enforceable decisions through the machinery of the National Railroad Adjustment Board set up under the provisions of the amendments of 1934. *However, the law does not require that employees take such disputes to the Adjustment Board or abide by the decisions of the Board. And it does not forbid strikes in connection with disputes falling within the jurisdiction of the Adjustment Board, and there have been many strikes of that kind.*" (Id., p. 13; emphasis supplied.)

It cannot be said, in view of the excerpts above quoted from the Subcommittee's hearings on the Donnell Bill, that eminent spokesmen for both carriers and labor were not of the opinion or did not fully acquaint the United States Senate with the fact that under the Railway Labor Act strikes by employees to compel carriers to settle grievances and to compel compliance with awards of the Adjustment Board were permissible or, at least, not illegal. The demise of that bill is eloquent evidence of the legislative survival of the right of railroad employees to strike for such purpose.

Litigation Following Failure to Obtain Legislative Prohibition of Strike Action

It was not until after the failure of enactment of the Donnell Bill—some 16 years following the creation of the National Railroad Adjustment Board—that the carrier managements, in this and several other court actions, first seriously urged that the effect of the 1934 amendments had been to outlaw strikes of railroad employees over disputes that could be submitted to the Board. In addition to the instant case, the only other Court of Appeals decision is that of the Fifth Circuit in *Brotherhood of Railroad Trainmen v. Central of Georgia Ry. Co.*, 299 F. (2d) 901, now before this Court as No. 84, October Term, 1956, and assigned

for argument immediately preceding this case. The decisions of the two Circuits are, we believe, in direct conflict, and it is of course our position that the correct result was reached by the Court of Appeals for the Fifth Circuit.

In an earlier case arising in the Seventh Circuit, but never appealed, United States District Judge Walter J. LaBuy, in an unreported decision, had reached the same result as in the *Central of Georgia* case, holding that the Norris-LaGuardia Act deprived him of jurisdiction to enjoin a strike for the purpose of securing a carrier's compliance with an award of the Adjustment Board which had sustained certain contract claims of employees. *Grand Trunk Western R.R. Co. v. American Train Dispatchers Association*, U.S. Dist. Ct., N.D. Ill., E. Div., No. 53-C-1595, Sept. 22, 1954. On the other hand, in the recent case of *Kansas City Terminal Ry. v. Manion*, Kansas City (Mo.) Court of Appeals, No. 22522, Nov. 5, 1956, unofficially reported at 39 LRRM 2126, the court followed the decision of the court below in this case. The only other cases of this sort that have come to our attention were not litigated beyond the stage of temporary restraining orders.

It is thus evident that the question of the legality under the Railway Labor Act of strikes in support of grievances and contract claims is one upon which little direct authority is available. The few decisions in point are recent, and as we have pointed out, the question was not litigated until after the failure of passage of the Donnell Bill. This absence of previous cases is undoubtedly the result of the general understanding among eminent counsel active in the railroad labor field, as illustrated by the testimony cited above, that such strikes are not banned by current legislation.

In the foregoing discussion we have shown that strikes of the sort here involved were not illegal under common

law, and that neither the language of the statute nor its legislative history support the conclusion of the court below that they were outlawed by the Railway Labor Act. In any event, however, and irrespective of the question of the strike's legality, we submit that the Norris-LaGuardia Act clearly deprived the District Court of jurisdiction to grant the injunctive relief sought by respondents.

II. THE FEDERAL COURTS ARE WITHOUT JURISDICTION TO ENJOIN STRIKES OVER GRIEVANCES AND CONTRACT DISPUTES IN THE RAILROAD INDUSTRY.

Applicability of the Norris-LaGuardia Act

In 1932, following a long and embittered history of resort to the injunctive process in connection with labor disputes, Congress enacted the Norris-LaGuardia Act (29 U.S.C., Sec. 101 et seq.) with the avowed purpose of according to the individual worker "full freedom of association, self-organization, and designation of representatives of his own choosing, to negotiate the terms and conditions of his employment", and freedom "from the interference, restraint, or coercion of employers of labor, or their agents, in the designation of such representatives or in self-organization or in other concerted activities for the purpose of collective bargaining or other mutual aid or protection".

While applicable to labor disputes in all industries, it is particularly pertinent here to note that the Norris-LaGuardia Act received its greatest impetus from the history of strike injunctions in railroad labor disputes. This fact was adverted to frequently in the separate opinions of the various Supreme Court Justices in the case of *United States v. United Mine Workers of America*, 330 U.S. 258, where the provisions of the Norris-LaGuardia Act were held inappli-

cable to the Mine Workers' situation *only* on the ground that they were at the time employees of the United States of America, following seizure of the mines under the War Labor Disputes Act of 1943. Illustrative is the following excerpt from Mr. Justice Frankfurter's concurring opinion:

"... It would mean that, in order to protect the public interest, which may be jeopardized just as much whether an essential industry continued under private control or has been temporarily seized by the Government, a court could, at the behest of the Attorney General of the United States, issue an injunction as courts did when they issued the Debs, the Hayes and the Railway Shopmen's injunctions. But it was these very injunctions, secured by the Attorney General of the United States under claim of compelling public emergency, that gave the most powerful momentum to the enactment of the Norris-LaGuardia Act . . ." (330 U.S., p. 315; see also opinion of the Court, by Mr. Chief Justice Vinson, at 330 U.S., 277-278, and especially footnote 29; and dissenting opinion of Mr. Justice Murphy at 330 U.S., 338.)

The method by which Congress elected to achieve these objectives was to severely limit the jurisdiction of the courts of the United States in a number of specifically described instances, and particularly with respect to injunctive relief in connection with labor disputes.

The disputes which gave rise to the instant case clearly fall within the following broad definition of a "labor dispute" as set forth in the Act:

"(c) The term 'labor dispute' includes any controversy concerning terms or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of whether or not the disputants

stand in the proximate relation of employer and employee." (29 U.S.C., Sec. 113 (c).)

**Lack of Jurisdiction Unaffected by Questions of
Legality or Illegality of Strike.**

Of the several provisions in the Norris-LaGuardia Act which operate to exclude from the District Court's jurisdiction the injunctive relief sought by respondents here, the most sweeping in effect are the following portions of Section 4:

"No court of the United States shall have jurisdiction to issue any restraining order or temporary or permanent injunction in any case involving or growing out of any labor dispute to prohibit any person or persons participating or interested in such dispute (as these terms are herein defined) from doing, whether singly or in concert, any of the following acts:

"(a) Ceasing or refusing to perform any work or to remain in any relation of employment;

.....

"(e) Giving publicity to the existence of, or the facts involved in, any labor dispute, whether by advertising, speaking, patrolling, or by any other method not involving fraud or violence;

.....

"(g) Advising or notifying any person of an intention to do any of the acts heretofore specified;

"(h) Agreeing with other persons to do or not to do any of the acts heretofore specified; and

"(i) Advising, urging, or otherwise causing or inducing without fraud or violence the acts heretofore specified, regardless of any such undertaking or promise as is described in section 103 of this title. (29 U.S.C., Sec. 104.)

It is apparent from a reading of these provisions that Congress has seen fit to flatly prohibit the granting by Federal courts of injunctive relief against the acts of striking, giving publicity to the facts involved in labor disputes, urging or inducing strikes or work stoppages, or any of the other specified acts, *irrespective of any question of legality of purpose of the acts sought to be enjoined*, so long as no fraud or violence is involved. Thus, in *New Negro Alliance v. Sanitary Grocery Co.*, 303 U.S. 552, this Court stated that the Act "does not concern itself with the background or motives of a dispute" (p. 561); and in the case of *Wilson & Co. v. Birl*, 105 F. (2d) 948, the Court of Appeals for the Third Circuit said:

"... The test is objective; not the purpose or intent of the acts sought to be restrained, and not even their illegality; *but whether they come under Sec. 4.*"

"... *A strike, therefore, cannot be enjoined. Whether or not the strike in this case is illegal, because of its purpose, as argued by appellant, is therefore beside the point. The test is no longer given the uncertain elasticity of 'illegality'. The statute, dealing strictly with procedure, nowhere attempts to define as lawful the acts which it says may not be enjoined....*" (105 F. (2d), p. 951; emphasis supplied.).

The Railway Labor Act Did Not Repeal the Norris-LaGuardia Act as to Strike Injunctions Such as That Sought Here.

Respondents argued below, and the Court of Appeals held (R. 39), that the Railway Labor Act operated to repeal the provisions of the Norris-LaGuardia Act, to the extent that it might otherwise apply in a dispute such as that here involved. Support for this conclusion was sought in the decisions of this Court in *Virginian R. Co. v. System Federation No. 40*, 300 U.S. 515, and other cases where equit-

able relief was given to enforce rights granted by the Railway Labor Act.

It is significant, particularly in view of the policy declarations of Section 2 of the Norris-LaGuardia Act (29 U.S.C., Sec. 102) making clear that the principal objective was to protect employees against their employers, that these cases did not involve injunctions sought by railroad managements against strikes by their employees.

In any event, however, it is apparent that the *Virginian* case, and others in which this Court upheld injunctive relief in railroad labor disputes, do not lay down any doctrine of general inapplicability of the Norris-LaGuardia Act in the railroad field. Quite the contrary is true, and the opinion in *Graham v. Brotherhood of L. F. & E.*, 338 U.S. 232, makes it clear that the Norris-LaGuardia Act is avoided *only* when the court is called upon "to compel compliance with *positive mandates* of the Railway Labor Act" (p. 237), and to enforce rights affirmatively guaranteed by the Act which would be sacrificed or obliterated if no injunctive relief could be had, such as the right of racial minorities to non-discriminatory representation by their statutory bargaining agents.

Finally, in attributing to Congress an intention to repeal or set aside the Norris-LaGuardia Act insofar as these railroad labor disputes are concerned, the court below read into the Railway Labor Act a philosophy of legal compulsion which, as we pointed out earlier, this Court has repeatedly rejected in cases construing that statute. (*General Committee, B.L.E. v. Missouri-K.T.R. Co.*, *Brotherhood of R.T. v. Toledo, Peoria & W. R.*, and *Moore v. Illinois Central R. Co.*, all *supra*. See also *Switchmen's Union of N.A. v. Nat. Mediation Bd.*, 320 U.S. 297, and *General Committee, B.L.E. v. Southern P. Co.*, 320 U.S. 338.) These decisions plainly disavow the propriety of attempting to interpret

the Railway Labor Act so as to supply, by inference and implication alone, a Congressional purpose to over-ride the but-recently adopted Norris-LaGuardia Act and substitute a system of adjudicating railroad labor disputes by the injunctive process.

CONCLUSION

In our discussion we have shown that strikes of the sort here involved, clearly lawful in the absence of statutory prohibition, were not made illegal when Congress adopted the 1934 amendments to the Railway Labor Act. This conclusion is supported by the Act's legislative history; and decisions of this Court have noted the caution and piecemeal fashion with which Congress dealt with this subject, and have established the principle that adjudication and litigation of railroad labor disputes is not to be extended beyond the clear and positive requirements of the statute. We further pointed out that irrespective of any question of the strike's legality, the Norris-LaGuardia Act withdrew from the District Court's jurisdiction the right to enjoin it, and that the latter Act may not be said to have been repealed by mere inference or implication sought to be drawn from the Railway Labor Act, without any positive mandate or expressly created right to be enforced.

We submit that the decision of the court below, in finding an implied prohibition of strikes in the Railway Labor Act and upholding a concomitant right to proceed against them by injunctive process, is not only unsupported by the statute and its legislative history, but is diametrically op-

posed to established principles governing its interpretation and that of the Norris-LaGuardia Act.

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9th day of January, 1957.

CERTIFICATE OF SERVICE

I, Richard R. Lyman, one of the attorneys for the Railway Labor Executives' Association, amicus curiae, do hereby certify that on the 9th day of January, 1957, I served the attached brief of amicus curiae upon all parties of record herein by depositing copies thereof in the United States mails, via airmail, postage prepaid, addressed to Mr. John J. Naughton, 139 North Clark Street, Chicago 2, Illinois, and to Henslee, Monek and Murray, Attorneys-at-Law, 139 North Clark Street, Chicago 2, Illinois, attorneys for Petitioners Brotherhood of Railroad Trainmen, etc., et al.; Mr. Walter J. Cummings, Jr., 11 South LaSalle Street, 20th Floor, Chicago 3, Illinois, and Sidley, Austin, Burgess & Smith, Attorneys-at-Law, 11 South LaSalle Street, 20th Floor, Chicago 3, Illinois, Attorneys for Respondents Chicago River and Indiana Railroad Company, et al.

Richard R. Lyman

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IN THE
Supreme Court of the United States

OCTOBER TERM, 1956

No. 313.

BROTHERHOOD OF RAILROAD TRAINMEN

et al.,

Petitioners,

v.

CHICAGO RIVER & INDIANA RAILROAD

COMPANY *et al.*,

Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE SEVENTH CIRCUIT

**BRIEF OF THE AMERICAN SHORT LINE
RAILROAD ASSOCIATION AS AMICUS CURIAE**

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**BRIEF OF THE AMERICAN SHORT LINE
RAILROAD ASSOCIATION AS AMICUS CURIAE**

INTEREST OF THE AMICUS CURIAE

The American Short Line Railroad Association, on whose behalf this brief is filed with the consent of the parties, is an unincorporated association with a present membership of 285 railroads.

Many of the Association's members furnish essential switching and interchange service to basic industrial plants in various parts of the nation. Without such service, operation of those plants would be stopped or substantially curtailed, the communities in which those plants are located would immediately be seriously affected, and the chain reaction would soon spread to many other plants and industries

which are dependent upon the basic plants as customers or suppliers. Other members of the Association serve as feeder lines in rural communities, moving produce out of and freight into such communities. Disruption of feeder service would have serious local consequences and would disrupt the movement of large quantities of freight by the trunk line railroads. In the case of each Association member, therefore, relatively few employees hold the economic key to the continued operation of large segments of industry or the economic activities of substantial rural areas.

The procedures provided by the Railway Labor Act have, thus far, enabled the carriers and the labor organizations representing their employees to carry on their relations and settle their differences without substantial resort to economic warfare. The outcome of this case, and the companion case *Central of Georgia Railway Co. v. Brotherhood of Railroad Trainmen, etc., et al.* (No. 84), will determine whether those provisions will continue to have life and vitality as an effective means of maintaining industrial peace on the railroads of the Association's members, or whether they will hereafter exist merely as an impotent expression of Congressional hope.

QUESTION PRESENTED

The question presented in this case, and also in the companion case, is whether the procedures prescribed by the Railway Labor Act for the settlement of disputes between carriers and their employees are enforceable by the federal courts.

The specific procedure which is involved in this case is the procedure for the settlement of grievances. Other procedures are prescribed in the Act for the mediation of disputes over contract changes, which procedures also are mandatory and exclusive until they have been exhausted.

ARGUMENT

POINT I

POWER OF THE FEDERAL COURTS TO ENFORCE THE PROVISIONS OF THE RAILWAY LABOR ACT IS NOT WITHDRAWN BY THE NORRIS-LA GUARDIA ACT.

The problem presented in this phase of the case arises by reason of the fact that there are two important statutes, both enacted by Congress, which seemingly are inconsistent on their face. The Norris-LaGuardia Act, in broad and sweeping language, purports to ban the issuance of injunctions in cases arising out of labor disputes. The Railway Labor Act, on the other hand, in revisions enacted two years after passage of the Norris-LaGuardia Act, sets forth in elaborate detail the rights and obligations of carriers and their employees in relation to each other and prescribes comprehensive procedures for the settlement of controversies between them, one of the stated purposes of the Act being "to avoid any interruption to commerce or to the operation of any carrier engaged therein." The Railway Labor Act thus appears to create rights enforceable by the federal courts; while the Norris-LaGuardia Act, if literally applied, would make those rights illusory and without remedy.

Fortunately, this Court is not committed to "narrowly literal construction" of statutory words, and will look beyond the words to statutory object and policy and avoid construction that "would produce incongruous results." *Mastro Plastics Corp. et al. v. National Labor Relations Board*, 350 U. S. 270, 285-286 (1956); *National Labor Relations Board v. Lion Oil Company et al.*, 25 U. S. L. Week 4098, 4099 (U. S. Sup. Ct., January 22, 1957). Application of those rules of construction, it is submitted, requires that the enforceability by the federal courts of the procedures prescribed by the Railway Labor Act be upheld.

Were it not for the fact that the question presented here has now arisen in a different context than in previous cases, it would seem to have been conclusively settled by the prior decisions of this Court.

The first case in which a similar question arose did not involve the Norris-LaGuardia Act, but its predecessor, Section 20 of the Clayton Act (29 U. S. C. § 52). *Texas & New Orleans Railroad Company et al. v. Brotherhood of Railway & Steamship Clerks et al.*, 281 U. S. 548 (1930). In that case a union obtained an injunction to compel a carrier to bargain with it, on the ground that the carrier was required to do so under the Railway Labor Act. Among the defenses advanced by the carrier, and rejected by this Court, was the contention that Section 20 precluded the issuance of an injunction because the union had not made a showing of an irreparable injury to a property right as required under that Section. The opinion of this Court, by Chief Justice Hughes, also states (p. 571):

"It may be doubted whether Section 20 can be regarded as limiting the authority of the court to restrain the violation of an explicit provision of an act of Congress, where an injunction would otherwise be the proper remedy. . . ."

The dictum in the foregoing case was followed in *Virginian Railway Co. v. System Federation No. 40, etc., et al.*, 300 U. S. 515 (1937). There the plaintiff union, relying on the Railway Labor Act, obtained an injunction requiring the defendant carrier to bargain with it and to stop influencing its employees to join a company union. The injunction was upheld by the Circuit Court and by this Court, despite the contention of the defendant that such an injunction was invalid under the Norris-LaGuardia Act.

The opinion of the Circuit Court, by Judge Parker, states (84 F. 2d at p. 647):

"... Statutes in derogation of the ordinary equity powers of the court should be strictly construed;

and a provision manifestly intended to provide against blanket injunctions, of which complaint had been frequently made prior to the passage of the statute, should not be construed to deprive the court of the power to enforce by mandatory decree a right created by Act of Congress."

In the opinion of this Court, Mr. Justice Stone stated that the provisions of the Railway Labor Act

"... cannot be rendered nugatory by the earlier and more general provisions of the Norris-LaGuardia Act...." (p. 563)

The decision in the *Virginian* case was followed in *Graham et al. v. Brotherhood of Locomotive Firemen & Enginemen*, 338 U. S. 232 (1949) and *Brotherhood of Railroad Trainmen et al. v. Howard et al.*, 343 U. S. 768 (1952). In the *Graham* case twenty-one Negro firemen obtained an injunction against the union, restraining compliance with an agreement between the union and the various carriers which made it impossible for Negro firemen to be promoted, on the ground that such an agreement was prohibited under the Railway Labor Act. The opinion of this Court, by Mr. Justice Jackson, states (pp. 237-8):

"The respondent has strenuously urged throughout that in view of the provisions of the Norris-LaGuardia Act, 29 U. S. C. §§ 101 *et seq.*, the District Court was without jurisdiction to grant relief by injunction.

"The Court of Appeals did not pass upon this contention, and were it a question of first impression we should not be disposed to consider it here at the present stage of the proceedings. But this is not a question of first impression. In *Virginian R. Co. v. System Federation*, 300 U. S. 515, we held that the Norris-LaGuardia Act did not deprive federal courts of jurisdiction to compel compliance with positive mandates of the Railway Labor Act, 45 U. S. C. §§ 151 *et seq.*, enacted for the benefit and protection, within a particular field, of the same groups whose rights are preserved by the Norris-LaGuardia Act....

"But the Brotherhood urges that the controversy in the *Virginian* case did not involve a labor dispute within the meaning of the Norris-LaGuardia Act and that accordingly that case must be distinguished on its facts. The Act defines a 'labor dispute' to include 'any controversy concerning terms or conditions of employment, or concerning the *association or representation of persons* in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment ' 29 U. S. C. § 113(c). (Emphasis supplied.) We do not accept the Brotherhood's invitation to narrow the meaning of that term. The purpose of the Act would be vitiated and the scope of its protection limited were it to be construed as not extending to efforts of a duly certified bargaining agent to obtain recognition by an employer. Moreover, if this Court had considered that a labor dispute was not involved, it would hardly have taken the trouble, in the *Virginian* case, to refute contentions based upon parts of the Act, which as a whole extends its protection solely to such disputes.

"Nor does the Norris-LaGuardia Act contain anything to suggest that it would deprive these Negro firemen of recourse to equitable relief from illegal discriminatory representation by which there would be taken from them their seniority and ultimately their jobs. Conversely there is nothing to suggest that, in enacting the subsequent Railway Labor Act provisions insuring petitioners' right to non-discriminatory representation by their bargaining agent, Congress intended to hold out to them an illusory right for which it was denying them a remedy. If, in spite of the *Virginian*, *Steele* and *Tunstall* cases, *supra*, there remains any illusion that under the Norris-LaGuardia Act the federal courts are powerless to enforce these rights, we dispel it now. . . ."

In the *Howard* case, the Court, on the authority of the *Graham* case, upheld the jurisdiction of the federal courts to issue an injunction "to protect Negro railroad

employees from loss of their jobs under compulsion of a bargaining agreement, which, to avoid a strike, the railroad made with an exclusively white man's union", despite defendants' contention that the Norris-LaGuardia Act prevented its issuance.

Concededly, in none of the foregoing cases was an injunction sought by a carrier against the union. But the Norris-LaGuardia Act makes no distinction based upon the position of the plaintiff. If its provisions do not suffice to deprive the plaintiffs involved in the foregoing cases from securing judicial enforcement by injunction of the mandates of the Railway Labor Act, they should be equally inapplicable in the present case. There is no reason or justification for construing the Norris-LaGuardia Act as imposing a greater burden when an employer seeks injunctive relief, than it does when a union or a Negro seeks such relief. The rights of unions and employees under the Act are not of any higher order or more worthy of legislative or judicial concern than are the rights of carriers and the public to have labor controversies settled by the orderly and peaceful procedures prescribed by Congress in the Railway Labor Act instead of by economic warfare.

POINT II

THE PROCEDURE PRESCRIBED BY THE RAILWAY LABOR ACT FOR THE ADJUSTMENT OF GRIEVANCES IS MANDATORY AND PRECLUDES THE ALTERNATIVE REMEDY OF A STRIKE.

The petitioners in this case contend that the procedure prescribed by the Railway Labor Act for the adjustment of grievances by the National Railroad Adjustment Board is not mandatory and does not preclude the alternative remedy of a strike, hence a labor organization may not be enjoined from striking to force the settlement of a grievance instead of following the procedure prescribed by law.

Respondent, in answering that contention, elaborates and discusses in full in its brief the legislative history of the

1934 amendments to the Railway Labor Act. There is no need to repeat that discussion here, except to express concurrence in the conclusion that it does establish that there was a general understanding when the 1934 amendments were being enacted that the adjustment of grievances by the new procedure was not only to be binding and enforceable upon both parties, but that, once invoked, it was to preclude the employees from striking. The statute does not compel the parties to invoke the prescribed procedure, and in that limited sense the procedure is not wholly compulsory. But once the procedure is invoked by either party, there is no provision for any alternative remedy by the other party.

The conclusion that Congress intended that the new provisions for the adjustment of grievances be mandatory is fortified by the unhappy experience with prior legislation in the same area, beginning as far back as the Transportation Act, 1920 (41 Stat. 456, 469), and by the subsequent trend of legislation away from voluntary measures and toward mandatory procedures. The Transportation Act, 1920, which provided for the return of the railroads to private operation following their control by the Government during the First World War, included (in Title III) an elaborate procedure for the mediation of railroad labor disputes by a Railroad Labor Board consisting of 9 members, 3 appointed by the President, 3 by the carriers and 3 by the railroad Brotherhoods. The statute made it clear that the decisions of the Board were enforceable only by the pressure of public opinion. The infirmities of that legislation are commented upon in the decisions of this Court in *Pennsylvania Railroad Company v. United States Railroad Labor Board et al.*, 261 U. S. 72 (1923) and *Texas & New Orleans Railroad Company et al. v. Brotherhood of Railway & Steamship Clerks et al.*, 281 U. S. 548, *supra*.

The voluntary procedures prescribed by the provisions of the Transportation Act were so ineffective that both political parties went on record as supporting a change; and

in 1926 those provisions were replaced by the Railway Labor Act (44 Stat. 577), which moved in the direction of compulsion. That Act made arbitration awards judicially enforceable, provided for the creation of an Emergency Board to be appointed by the President to investigate any dispute threatening to deprive any section of the country of essential transportation service and prohibited any change in the conditions out of which such dispute arose until 30 days after the Emergency Board's report thereon to the President. It also included extensive provisions relating to the settlement of grievances by adjustment boards established by agreement of the carriers and their employees and for the settlement of any disputes by arbitration agreed to by the parties, but by the terms of the statute those procedures remained optional and voluntary in nature.

Because of the continuing ineffectiveness of the prescribed procedures, the 1934 amendments were proposed and enacted (48 Stat. 1185). The legislative history of those amendments makes it clear that both the carriers and the railroad Brotherhoods recognized that the previous voluntary measures had failed and that under the new amendments grievances were to be effectively settled, without resort to strikes, by the Adjustment Board procedure therein provided.

Under the circumstances, in view of the unsatisfactory experiences of Congress with earlier legislation providing voluntary procedures for the settlement of grievances and other disputes and its obvious purpose in 1934 to correct the situation and to provide more effective procedures, it is only logical to conclude that Congress intended to make the new procedures mandatory.

An analogous problem of interpretation has arisen in cases in which collective bargaining contracts have included specific procedures for the settlement of grievances, but have not contained express no-strike provisions. In such cases the courts have implied a no-strike obligation from

the existence of the agreed procedures for the settlement of grievances. *International Brotherhood of Teamsters, etc. v. W. L. Mead, Inc.*, 230 F. 2d 576 (1st Cir. 1956), *cert. denied*, 352 U. S. 802 (1956); *United Construction Workers et al. v. Haislip Baking Company, etc.*, 223 F. 2d 872 (4th Cir. 1955), *cert. denied*, 350 U. S. 847 (1955); *National Labor Relations Board v. Dorsey Trailers, Inc.*, 179 F. 2d 58 (5th Cir. 1950); see also *National Labor Relations Board v. Sands Manufacturing Co.*, 306 U. S. 332 (1939). By the same line of reasoning, it should be concluded that when Congress established a detailed procedure for the settlement of grievances involving employees of common carriers, for the expressed purpose of avoiding interruptions to commerce, it intended to make that procedure mandatory and to rule out the alternative remedy of a strike.

CONCLUSION

The cases referred to in the foregoing discussion fully warrant the conclusion that, where an antinomy exists between the positive mandates of the Railway Labor Act and the negative prohibitions of the Norris-LaGuardia Act, the former prevails over the latter; that the shield of the latter Act is not available to a defendant who violates the former.

Although behind the Norris-LaGuardia Act is the laudable purpose of protecting the legitimate interests and activities of organized labor, behind the Railway Labor Act is the even more basic and fundamental purpose of protecting the public against the widespread chaos and hardships that result from application of the law of the jungle in labor relations on key transportation systems.

At stake in this case, and in the *Central of Georgia Railway* case, is the whole structure of peaceful and orderly procedures for the settlement of railroad labor disputes erected by the Railway Labor Act. For if it should be

established that there is no means of enforcing those procedures and that they may be ignored with impunity, that will of certainty put an end to the Act's effectiveness and will defeat the stated purposes of the Act "to avoid any interruption to commerce or to the operation of any carrier" and "to provide for the prompt and orderly settlement of all disputes concerning rates of pay, rules or working conditions." It would also produce the incongruous result that the federal courts may protect the rights of unions and employees under the Act, but that they may not protect the paramount rights of the public to have labor disputes on the nation's transportation systems settled by the peaceful procedures prescribed by Congress.

The judgment below in this case should be affirmed, and for the same reasons the judgment in the companion case should be reversed.

February 8, 1957.

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IN THE
Supreme Court of the United States

OCTOBER TERM, A. D. 1956.

No. 313

BROTHERHOOD OF RAILROAD TRAINMEN,
etc., et al.,

Petitioners,

vs.

CHICAGO RIVER AND INDIANA RAILROAD COM-
PANY, et al.,

Respondents.

PETITION OF BROTHERHOOD OF RAILROAD
TRAINMEN, ETC., ET AL., FOR REHEARING.

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**PETITION OF BROTHERHOOD OF RAILROAD
TRAINMEN, ETC., ET AL., FOR REHEARING.**

Petitioners, Brotherhood of Railroad Trainmen, *et al.*,
pray that this court grant rehearing with respect to its
decision of March 25, 1957, in this case because:

The present opinion rests upon a view of the "finality" and
"binding character" of awards of the Adjustment Board,
which view was not urged or considered by either party
or expressed by the lower courts. The view expressed by
the court is contrary to the terms of the Act and to all of
the lower courts' decisions on the point.

The basic ground upon which this court decided this case
was not apprehended or discussed by either petitioners or

respondents and was not involved in the considerations or decisions of the lower courts.

This unanticipated basis for the court's decision is the court's declaration that "minor grievances", once submitted by either party to the Adjustment Board, entail compulsory arbitration with resulting awards that are, so the present opinion says, "*final and binding upon both parties to the disputes*", wherefor, so the court's presently standard opinion reasons, the statute prohibits strikes over matters pending before the Adjustment Board. But Section III First (m) of the Railway Labor Act provides and the courts have consistently interpreted the Act as providing that when judicial proceedings are brought for the enforcement of an award, such awards "shall be final and binding upon both parties to the dispute *except insofar as they shall contain a money award.*" The foregoing italicized language of the Act is omitted from the court's quotations of the text and, we believe, from the reasoning that finds utterance in the present opinion.

The claims involved in the dispute in the instant case and in No. 702 were claims for money which, if they should result in sustaining awards of the Board, would contain a money award.

The result of the Court's presently standing opinion is that where a claim for monetary payment is determined in favor of the *employee*, the award is "a money award", and hence is *not* final, but is judicially reviewable. Where, however, the award is in favor of the Railroad Company, it is *not* "a money award" and is *not* judicially reviewable.

It is thus apparent that the Railway Labor Act as expounded by the Court's present opinion does not operate with equal finality upon employer and employee.

That awards for money are reviewable, not only as to the amount of the award, but as to the propriety of any award,

has been constantly recognized by lower Federal Courts; for example:

Thomas v. New York Central & St. Louis R. Co.,
185 F.2d 614 (6th Cir.).

Dahlberg v. Pittsburg & L. E. R. Co., 138 F. 2d
121 (3rd Cir.).

Washington Terminal Co. v. Boswell, 124 F. 2d 235
(App. D. C.); Cert. den. 315 U. S. 795.

Crist v. Public Belt R. R. Co., 93 F. Supp. 103.

Berryman v. Pullman Co., 48 F. Supp. 542.

Moreover, the Court's present opinion, especially when considered in the light of the Court's decision in *Manion v. Kansas City Terminal Railway Co.*, No. 702, treats as paramount the question whether a "minor grievance" has or has not been submitted to the Adjustment Board. In the present case, the Court sustains an injunction restraining strikes over "minor grievances" submitted to that Board. In the *Manion* case, where the grievances had not been submitted to the Board, the Court has vacated the lower court's opinion.

The result of the court's opinion in this and the *Manion* cases, is to intimate, without declaring, that the question whether strikes over "minor grievances" may be restrained depends upon whether such grievances have been submitted to the Board.

The net effect of the present opinion will be a deluge of minor claims submitted to the Board, merely to lay the ground work for the injunction of a strike. The result of this avalanche of minor claims will be to submerge the Board in a morass of altercations that its members simply cannot handle with the expedition and dispatch contemplated by the Railway Labor Act and essential for the functioning of that legislative measure.

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In the light of these considerations, Petitioners earnestly
seek this Court's re-hearing.

Respectfully submitted,

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CERTIFICATE OF GOOD FAITH UNDER RULE 58

William C. Wines, a member of the bar of this Court and of Counsel in this case, certifies that this Petition is presented in good faith and not for delay.

.....
William C. Wines

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CHICAGO RIVER AND INDIANA RAILROAD Co., ET AL.

On Writ of Certiorari to the United States Court of Appeals
for the Seventh Circuit

**MOTION OF RAILWAY LABOR EXECUTIVES'
ASSOCIATION FOR LEAVE TO FILE A BRIEF
AS AMICUS CURIAE IN SUPPORT OF
PETITION FOR REHEARING**

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IN THE
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OCTOBER TERM, 1956

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No. 313

BROTHERHOOD OF RAILROAD TRAINMEN, ETC., ET AL.,
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+ v.

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On Writ of Certiorari to the United States Court of Appeals
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**MOTION OF RAILWAY LABOR EXECUTIVES'
ASSOCIATION FOR LEAVE TO FILE A BRIEF
AS AMICUS CURIAE IN SUPPORT OF
PETITION FOR REHEARING**

The Railway Labor Executives' Association* respectfully moves the Court for leave to file a brief as *amicus curiae* in the above-entitled action in support of a petition for rehearing filed herein by petitioners Brotherhood of Railroad Trainmen, et al. With the consent of the parties the Association heretofore filed a brief as *amicus curiae* on the merits of the case. The Court's decision was issued on March 25, 1957, and petitioners have filed a petition for

* The organizations comprising this Association represent over 90% of all railroad employees in the United States.

rehearing of such decision. Because consent of respondents to the filing of a brief *amicus curiae* in support of the petition for rehearing was denied, this motion is filed pursuant to Rule 42 (3) of the Revised Rules of this Court.

The petition for rehearing raises questions of vital importance not only to petitioners but also to all railroad labor organizations and the employees they represent. As stated by petitioners, the decision of this Court was based upon a ground the involvement of which was not anticipated by the parties to the action and was not considered or discussed by them or by us or by the courts below. In the Court of Appeals the issue presented for determination was stated as whether the Railway Labor Act prohibits a union from striking over matters "which are *within the jurisdiction* of the National Railroad Adjustment Board." 229 F. 2d 926, 929 [Italics supplied.] In this Court, both petitioners and respondents directed their attention and argument to that issue. This Court stated that the ultimate question before it was "whether a railway labor organization can resort to a strike over matters *pending* before the Adjustment Board"; and held that resort to strikes could not be had over disputes pending before the Board. That the Court considered the pendency of the dispute before the Board the critical fact is shown by its decision two weeks later in *Manion v. Kansas City Terminal Railway Company*, No. 702, decided April 8, 1957, where resort to a strike was held not prohibited over disputes of the same nature if the disputes were not actually pending before the Board.

The Court's conclusion was predicated on the proposition that once either party to a dispute has submitted it to the Adjustment Board, that Board makes a decision which is "final and binding upon both parties", and because it is final and binding upon *both parties*, the alternative remedy of a strike is unavailable. This proposition, which was not briefed or argued, overrules decisions of lower courts

without mentioning that it does so, and will result in far-reaching changes in the administration of the Railway Labor Act.

This Court's statement of the finality of Board awards is made without the qualifying language of Section 3 First (m) of the Act "except in so far as they shall contain a money award." The court below, in referring to the finality of awards, used the qualifying language "except in instances where judicial review and enforcement of awards are expressly provided for or contemplated by the Act." 229 F. 2d 926, 931.

It was precisely because of this interpretation of the language of Section 3 First (m) by the Court of Appeals that neither petitioners nor *amicus curiae* regarded the "final and binding" language of the statute as crucial to the decision here. The claims involved in the instant case were claims for money which, if sustained, would result in money awards. As a consequence, the statutory language which this Court considered determinative in reaching its decision was not considered in any of the briefs or argument as significant to the issue presented.

We agree with petitioners that an opportunity should be afforded properly to consider the issue as recast by this Court's decision. It is of the utmost importance that certain additional pertinent authority and argument be brought to this Court's attention for the reason that the final and binding character which the Court attributes to Adjustment Board awards omits consideration not only of certain statutory language but is contrary to all decisions to date of which we have knowledge concerning the finality of Board awards involving a money payment. There are now pending before the several divisions of the Adjustment Board thousands of cases involving money claims. Heretofore if these awards were denied, the decision of the Adjustment Board has been final and binding. But where the awards have been sustained, the carriers have

been free to ignore them subject only to an enforcement suit in the courts under Section 3 First (p) of the Act [45 U.S.C. § 153 First (p)], in which case the only effect given the "final and binding" award is "prima facie evidence of the facts therein stated."

The dilemma created by this consistent practice of the courts when dealing with money awards of the Adjustment Board and this Court's construction of the statute in the instant case is a very real one. Does the Court's decision mean that in grievances involving the payment of money the right of employees to strike is not barred because any resulting awards would not be final and binding decisions of the Adjustment Board? Or does the Court mean that the lower courts have uniformly misinterpreted the statute and all awards of the Board are final and binding upon both parties and subject to enforcement as such by the courts? Or does the decision mean that courts have the right to review the *amount* of the money awarded but not the Board's interpretation of agreements from which such money payment results? Adoption of any construction of the statute other than the stated possibilities is incompatible with the basic ground of this Court's decision and clearly refutes the fundamental premise of the court that submission of a dispute by either party of the Adjustment Board brings about compulsory arbitration resulting in a decision which is "final and binding upon both parties."

Moreover, in the absence of an opportunity, through a grant of the petition for rehearing and this motion, for all parties vitally concerned to address themselves to these important considerations and have them clarified by the Court, we fear that the Court's decision will have practical consequences that will seriously interfere with the efficient operation of the Railway Labor Act. We believe the decision, absent reconsideration and clarification, will discourage and frustrate voluntary settlement of disputes contrary to the intent and purpose of the statute, will dras-

tically increase the number of disputes referred to the Adjustment Board, and will seriously endanger the present machinery of the Act for the disposition of disputes.

In a situation far less drastic in terms of its scope and impact on the Railway Labor Act and all of railroad labor, and far less serious in terms of the lack of an opportunity to be fully heard on matters considered important by the Court, this Court has heretofore permitted a full and careful exploration of the problem. See *Elgin Joliet & Eastern Ry. Co. v. Burley*, 326 U.S. 801, 327 U.S. 661, see particularly pp. 668-674.

For the foregoing reasons, this motion for leave to file a brief as *amicus curiae* in support of the petition for rehearing should be granted.


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